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AN
ELEMENTARY ANALYSIS
OF THE
LAWS AND REGULATIONS

ENACTED BY THE
GOVERNOR GENERAL IN COUNCIL,
AT FORT WILLIAM IN BENGAL,
FOR THE
CIVIL GOVERNMENT OF THE BRITISH TERRITORIES
UNDER THAT PRESIDENCY.

IN SIX PARTS.

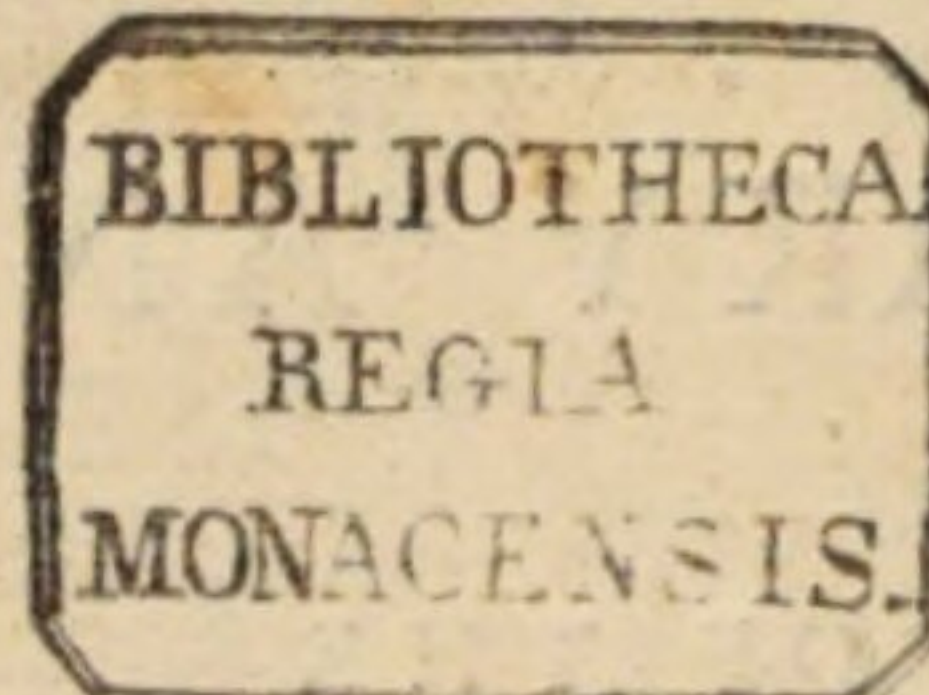
PART I.

DESIGNED FOR THE USE OF THE
STUDENTS IN THE COLLEGE OF FORT WILLIAM.

BY
THE PROFESSOR, UNDER THAT INSTITUTION,
OF THE
LAWS AND REGULATIONS OF THE BRITISH GOVERNMENT IN INDIA.

CALCUTTA:
PRINTED AT THE HONORABLE COMPANY'S PRESS.

1805.



LAW AND REGULATION

OF THE

GOVERNMENT OF INDIA

BY

THE

CIVIL GOVERNMENT OF INDIA

UNDER THE

IN SIX PARTS

PART I

OF THE

STUDENTS IN THE COLLEGE OF FORT WILLIAM

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LAW AND REGULATION OF THE BRITISH GOVERNMENT IN INDIA

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PUBLISHED AT THE HONORABLE COMMISSIONER'S OFFICE

1863

INTRODUCTION.

THE Author of the following attempt to facilitate the study and knowledge of the Laws and Regulations, enacted by the Governor General in Council of the British possessions in India, is conscious that he has little qualification for such an undertaking, except what he may have derived from official experience, in the course of nearly four and twenty years employment; formerly in the Revenue, and latterly in the Judicial Department, of the Honorable Company's Civil Service at this Presidency. In discharge of the obligations imposed by the Public Trusts committed to him in these Departments, it became his duty to inform himself of the letter, and, as far as lay in his power, of the principles, spirit, and intention, of the rules of conduct, which had been established for his guidance, or for that of the Officers acting under his control, in the administration of Justice, Civil and Criminal; in the establishment of an efficient Police; in the settlement and collection of the Public Revenue; in the maintenance of the rights of Proprietors and Farmers of Land, and of their Under-Tenants; and, generally, in the execution of all functions appertaining to the Judicial and Revenue Officers of this Government. He is sensible, however, that any practical knowledge of the existing Regulations, which he may have acquired by the opportunity thus afforded him, in common with many of his fellow Servants more capable of profiting by it, has not qualified him to expound the Laws, which have been enacted for the internal Government of
the

the extensive and populous Territories, now immediately subject to the Chief Seat of British Authority in India; or to enter upon a course of systematic instruction in the fundamental principles, and elementary provisions of those Laws, such as would prove satisfactory to others, or to himself. The observation of the Commentator on the Laws of England, applied to education for the Bar by practice only, without previous regular instruction in the rudiments of legal knowledge, is equally applicable to a person, deriving the whole of his acquaintance with the Laws of India from a practical observance of the operation of them. "If practice
 " be the rule he is taught, practice must also be the whole
 " he will ever know: if he be uninstructed in the elements
 " and first principles upon which the rule of practice is founded,
 " ed, the least variation from established precedents will totally distract and bewilder him. *Ita lex scripta est*, is the
 " utmost his knowledge will arrive at; he must never aspire
 " to form, and seldom expect to comprehend, any arguments
 " drawn *a priori*, from the spirit of the Laws, and the natural
 " foundations of Justice."

To remedy the defect thus described by Sir W. BLACKSTONE,* he proposed "the making Academical Education a
 " previous step to the profession of the Common Law, and,
 " at the same time, making the rudiments of the Law a part
 " of Academical Education:" a suggestion obviously and forcibly apposite to the Laws of British India, and to the Institution expressly founded "for the better instruction of
 " the Junior Civil Servants of the Honorable the English
 " East India Company, in the important duties belonging
 " to the several arduous Stations, to which the said Junior
 " Civil Servants may be respectively destined, in the administration of Justice, and in the general Government of the
 " British Empire in India."†

* In his excellent Introductory Discourse on the study of the Law, page 32.

† Title of Regulation IX, 1800.

BUT it is further remarked by the Vinerian Professor of the Laws of England, who addressed the University of Oxford, and inculcated the study of those Laws in that University, that the “ Sciences are of a sociable disposition, and flourish best
 “ in the neighbourhood of each other; nor is there any
 “ branch of learning, but may be helped and improved by
 “ assistances drawn from other arts. If therefore the Student
 “ in our Laws hath formed both his sentiments and style by
 “ perusal and imitation of the purest *Classical* writers, amongst
 “ whom the historians and orators will best deserve his re-
 “ gard; if he can reason with precision and separate argument
 “ from fallacy, by the clear simple rules of pure unsophisti-
 “ cated *logic*; if he can fix his attention, and steadily pursue
 “ truth through the most intricate deduction, by the use of
 “ *Mathematical* demonstrations; if he has enlarged his con-
 “ ceptions of nature and art by a view of the several branches
 “ of genuine *experimental philosophy*; if he has impressed on
 “ his mind the sound maxims of the *law of nature*, the best
 “ and most authentic foundation of human Laws; if, lastly,
 “ he has contemplated those maxims reduced to a practical
 “ system in the *laws of Imperial Rome*; if he has done this,
 “ or any part of it, a Student thus qualified may enter upon
 “ the study of the Law with incredible advantage and re-
 “ putation.”

IT was, in like manner, the intention of the Noble Founder of the College of Fort William, as stated in his discourse at the late annual Meeting for the distribution of Prizes and Honorary Rewards*, “ to have provided sufficient means of in-
 “ struction for the Students in the principles of general ju-
 “ risprudence, and of the Law of Nations; connecting that
 “ course of study with the principles of the Mahomedan and
 “ Hindoo Law; and with those of the wise and salutary code

* Held before His Excellency MARQUESS WELLESLEY, as Visitor of the College, on the 11th February, 1805.

of Laws, introduced by that great and worthy Statesman, the
 MARQUESS CORNWALLIS, for the administration of these Pro-
 vinces; and improved and extended by succeeding Govern-
 ments, with the aid of the talents, knowledge and virtues
 of Sir GEORGE BARLOW." But it is much to be regretted
 that circumstances have prevented the institution of a regular
 course of Lectures on the general principles of Jurisprudence,
 and of the Law of Nations. The suspension of this part of
 the Original Plan for the College necessarily precludes,
 at present, any attempt to connect the study of the
 several local codes with that of general Law; except, as re-
 commended in the discourse referred to, by the private pe-
 rusal of the most approved elementary works upon the Laws
 of Nature, and of Nations; a knowledge of which " will prove
 of the utmost advantage in every department of this Ser-
 vice. To those destined for the Judicial Department the
 necessity of such a course of study is obvious and incon-
 trovertible. But in every department of the Service, the
 knowledge of the leading maxims of general Law will tend
 to secure a due observance not only of the Regulations of
 the Government; but of the principles of universal justice
 and equity towards every class of our numerous and va-
 rious Subjects, and of all the Native Inhabitants of India."

DIVESTED from this part of the original object, co-extensive
 with the general views of the great Personage, who founded
 a Collegiate Institution at this Presidency, for the political and
 benevolent purposes set forth in the preamble to the Regula-
 tion which established it, the Professor, intended by the rules
 for that Institution, of the Laws and Regulations enacted for
 the Civil Government of the British Territories in India,
 would still have an important duty to perform, in delivering
 a regular course of Lectures, on the principles and various
 provisions of this already voluminous, and yearly increasing
 Code; the general objects of which, to be explained and
 developed

developed by such a course, are, as expressed in the Visitor's Discourse before mentioned, "the due distribution of the
 " Legislative, Executive, and Judicial Authorities of the State;
 " the establishment of an impartial administration of Justice,
 " according to the existing Laws; and the provision of gra-
 " dual means for the improvement of those Laws." But the daily occupation of indispensable official duties, as well as an unfeigned sense of inability to do justice to the functions of a public Lecturer upon the Regulations, would not admit of this office being undertaken, by the person who has been unexpectedly honored with the station of " Professor of
 " the Laws and Regulations of the British Government in
 " India." At the same time, his having been distinguished by a selection, which he could not but esteem highly flattering to him, added to an earnest desire of contributing any aid in his power to promote the objects of an excellent public Institution, made him anxious to devise some practicable means of promoting the study of the Regulations in the College of Fort William; and after consideration of the subject, during a short intermission of Judicial duties, the following Plan of an Elementary Analysis, of the Laws and Regulations enacted by the Governor General in Council, designed for the use and assistance of the Junior Civil Servants of the Company, in acquiring a competent knowledge of those Regulations, before they enter upon the Public Service, was submitted to His Excellency the Patron and Visitor of the College; who having been pleased to honour it with his approbation, it is now, at his desire, commenced; and (*favente Deo*) will be gradually completed, as occasional leisure from official avocations may admit. It is necessary to premise however, that the Plan only, as here stated, has been seen and approved by the Governor General; that the Work itself has not been submitted for the sanction of Government; and consequently that it is not to be considered official, or bearing any authority beyond what it may be found to merit
 from

from it's correspondence with the Public Regulations to which it refers.

THE three principal Branches of the Public Administration, committed to the Agency of the East India Company's Servants at this Presidency, (exclusive of the Political and Diplomatic, which being distinct from the internal Government, and depending more immediately upon the Governor General, have not been provided for by any Regulation) are the Judicial, Revenue, and Commercial. This Analysis is therefore divided into Parts, having reference to each of those Departments; and as the prescribed period of study in the College of Fort William is three years, and two Public Examinations are directed to be holden annually*; the entire Work is meant to consist of Six Parts, in the following order.

PARTS I, and II, to have reference to the Judicial Department, Civil and Criminal; and to include (besides the general Legislative Provisions upon which the present Code of Regulations is founded) a concise elementary statement of the principal Rules which have been enacted for the administration of Civil and Criminal Justice, and for the Police; or for objects connected therewith; the general principles upon which such Rules appear to have been framed; and any material alterations of, or additions to, the original Rules, which have taken place under Regulations subsequently enacted.

PARTS III, and IV, to have reference to the Revenue Department; and to contain a similar Statement and Explanation of the Regulations passed for the Settlement and Collection of the several branches of the Public Revenue; for defining the powers and duties of the Officers employed in the Revenue Department; for securing the rights and tenures of the Proprietors and Tenants of Land; for enabling Landhol-

* Vide Sections XVIII, and XXIII, Regulation IX, 1800.

ders and Farmers to realize their Rents with punctuality; and generally for all objects connected with the administration of the Public Revenue; or the Land Tenures and Rents of the Country.

PART V. To refer to the Commercial Department; and to include a like specification of the rules established for the provision of the Company's Investment; or for the guidance of the Officers employed in the Commercial Department; for the manufacture and sale of Salt and Opium; or for the regulation and collection of the Customs; with such comment upon these subjects respectively, as may appear requisite, to explain the principles on which the existing provisions regarding them have been judged expedient.

PART VI. To be Miscellaneous; relating to all matters of importance in the Regulations, which shall not have been included in the preceding Parts; and to be accompanied with a similar illustration, as far as necessary, of the reasons of justice, or policy, which appear to have dictated the provisions made for them.

SUCH deficiencies, as may occur in the first execution of this plan, will be supplied in a future improved Analysis; if the work should be found to answer the purpose intended by it. In the mean time, it is hoped, that due allowance will be made for the imperfections of a first attempt, undertaken, on the spur of the occasion, amidst the constant avocations of high and arduous public duties, and without the advantages usually possessed, in a professional education; and the aid of antecedent works of a similar nature. The Author of this humble attempt to illustrate, and advance the knowledge of, the Laws of the British Empire in India, has indeed before him the *Commentaries on the Laws of England*; to which he has already referred; and in which the province
of

of an academical Expounder of the Laws is thus, in part, described. “ He should consider his course as a General Map
 “ of the Law, marking out the shape of the country, it’s con-
 “ nexions and boundaries, its greater divisions, and principal
 “ cities. It is not his business to describe minutely the
 “ subordinate limits, or to fix the longitude and latitude of
 “ every inconsiderable hamlet. His attention should be enga-
 “ ged, like that of the readers in FORTESCUE’S inns of Chance-
 “ ry, in tracing out the originals, and as it were the Elements
 “ of the Law.” But it must be manifest to every person who
 has examined the Regulations of the British Government in
 India, that, however excellent in their nature, and admirably
 adapted, as they are, for the objects intended by them; the
 matter of the greater part of them cannot, as a science, be
 brought in comparison with the Laws of England. By far the
 larger proportion of them contain rules of conduct, for the
 public Officers employed in the several Departments of the
 Civil Service; which, however necessary to be known by the
 persons to be employed in this service, and therefore, with the
 utmost propriety, made part of the studies which are to qualify
 the junior Civil Servants of the Company for the discharge of
 their future duties, could not perhaps, with the advantage of
 superior abilities, general knowledge, and sufficient leisure for
 the purpose, be embodied in a course of lectures, that would
 admit of the most distant imitation of the elegant, comprehen-
 sive, instructive work of BLACKSTONE; which, as remarked
 by his Editor, now “ forms an essential part of every Gentle-
 “ man’s library;” and from its lucid arrangement, pure lan-
 guage, and clear intelligible explanation of each distinct subject,
 is calculated to yield equal pleasure and improvement.

THE orderly perusal, and attentive study, of the Regulations
 themselves, must be the principal means of acquiring an accu-
 rate knowledge of them. The sole aim and scope of this
 Analysis are, to assist such perusal; to facilitate such study;
 and

and by the aid so given, to promote the attainment of a more perfect knowledge of the Code of Laws, administered by the Servants of the East India Company, (through whose mediation they are also the public Officers of the State,) in this extensive and valuable portion of the British Empire.

To the Students of the College of Fort William, it cannot be requisite to add any argument, advice, or encouragement, to convince them of the necessity of acquiring a correct knowledge of the Laws and Regulations in force at this Presidency, for the purpose of enabling them to discharge their future duties in the Public Service; to persuade them of the satisfaction, credit, and advancement, which must attend their possessing this qualification, in addition to the other means furnished by the College, of rendering themselves competent and distinguished Public Officers; or to stimulate their application to this course of study, by the prospect of immediate advantage and distinction, to those who shall pursue it with diligence and success; such as shall entitle them to the rewards and honors promised, in the late discourse from the Visitor, to “ those Students who shall appear at the Examinations to have
 “ obtained eminent knowledge of the Laws and Regulations,
 “ which they are destined to administer in their several sta-
 “ tions, to the people of these extensive Provinces.” The discourse referred to, which every Student, present and future, would do well to impress upon his memory, contains all that could be said, with effect, upon these topics; and the following quotation from it, comprising the most honorable testimony to the real merits of the Code of Regulations, which form the subject of the subsequent Analysis, will afford a suitable conclusion to these introductory remarks. “ Subject to the com-
 “ mon imperfection of every human Institution, this system of
 “ Laws is approved by practical experience, (the surest test of
 “ human Legislation,) and contains an active principle of
 “ continual revision, which affords the best security for pro-
 gressive

“ gressive amendment. It is not the effusion of vain theory,
 “ issuing from speculative principles, and directed to visionary
 “ objects of impracticable perfection; but the solid work of
 “ plain, deliberate, practical benevolence; the legitimate
 “ offspring of genuine wisdom, and pure virtue. The excel-
 “ lence of the general spirit of these Laws is attested by the
 “ noblest proof of just, wise, and honest Government; by the
 “ restoration of happiness, tranquillity and security, to an op-
 “ pressed and suffering people; and by the revival of agricul-
 “ ture, commerce, manufacture, and general opulence, in a
 “ declining and impoverished Country.”



FIRST PART.

SECTION I.

GENERAL LEGISLATIVE PROVISIONS.

THE system of law and regulation, distinguished by the high and just encomium of His Excellency the present Governor-General, who has considerably added to it, as well as extended it to the ceded and conquered provinces, which have been annexed to the British Empire during the splendid period of his government, owes its origin and foundation to the political wisdom, justice, and humanity, of the MARQUESS CORNWALLIS; whose exalted character will be alike perpetuated, by his glorious achievements in arms; by a life devoted to the interests and honor of his country; and by this memorial of his able, virtuous, and beneficent administration in India.

Origin of the
existing code of
Bengal Regula-
tions.

PREVIOUSLY to the year 1793, the territorial possessions of the East India Company were without a general code of British laws and regulations. Many rules and orders were indeed passed by successive governments, (from the appointment of Mr. HASTINGS to be Governor of Bengal in 1772,) for the administration of justice, the collection of revenue, and other objects of a public nature. During the preceding

State of rules
and orders in
force before the
year 1793.

twelve years some regulations had also been printed, with translations in the country languages: but others still remained in manuscript; and those printed were, for the most part, on detached papers; without any prescribed form, or order; and consequently not easily referred to, even by the officers of government; much less by the people at large; who had no means of procuring them in a collective state; or of becoming acquainted with such of them as had not been promulgated in the current languages.

Imperfect system of municipal law in consequence.

A PRIMARY and essential duty of every just government towards its subjects, that of publishing and enforcing an equitable system of law, adapted to their actual condition and circumstances, and calculated to protect them in the secure enjoyment of their rights, natural and acquired; “ a rule of civil conduct, commanding what is right, and prohibiting what is wrong;” as municipal law is defined and explained by BLACKSTONE;* or as CICERO has expressed it, “ *Sanctio justa, jubens honesta, et prohibens contraria* ;” † was thus in a great degree omitted, or imperfectly performed, towards the natives of an extensive territory; which, by cession or conquest, had, through the chartered agency of the East India Company, become subject to the crown and sovereignty of Great Britain.

Ascribable to circumstances which have attended the establishment of the British Empire in these Provinces.

THIS will not appear extraordinary if the gradual establishment of the British authority in these territories be adverted to. From the year 1640, when two ships from England to Bengal opened the trade of the London East India Company to this part of India, under a patent for exemption from customs, obtained from the Emperor SHÁH JAHÁN ‡; until the year 1707, when Calcutta was declared a Presidency, account-

The Company's Factories in

* See BLACKSTONE's second Introductory Section, on “ the nature of Laws in general.”

† II PHILIP. 12, quoted also in BLACKSTONE. B. I. C. 1.

‡ By a Surgeon, named BOUGHTON, sent to attend the Emperor's daughter, from Surat. Vide ORME, V. 2, p. 8.

able only to the Direction in England * ; the Company's factories, first at Hooghly, afterwards in Calcutta, and its adjacent villages, Sootanutty and Govindpoor, (the talooc-dary right to which, subject to an annual revenue of 1195 rupees, the prince ÂZEEM-OO-SHA'N, grandson of AU'RUNGZEB, and Soobahdar of Bengal, Behar, and Orissa, allowed the Company's agents to purchase in the year 1698, †) were dependent upon the presidency of Madras ; where the Company had a fort and garrison, which they had not been permitted to maintain in Bengal. Their transactions during this period were entirely commercial ; and though the United Company, in the year 1717 ‡, obtained a firman from the Emperor FURUKHSEER, granting them, besides privileges of trade, permission to purchase the taloocdary of thirty-eight additional villages, contiguous to the three before held by them, subject to an annual revenue of 8121 Rupees ; (which grant was frustrated by the influence and opposition of the Soobahdar JÂFUR KHA'N ;) no independent authority was thereby conveyed to them ; nor does any appear to have been claimed under it ; or under the *hush-ool-hookms* || which were issued by the king's minister in conformity with it.

Bengal dependent upon the Madras Presidency till 1707.

Nature of Firman granted by the Emperor of Hindoostan in 1717.

THE Treaty with SURAJ-OO-DOU'LAN, in February 1757, after the recapture of Calcutta, by the fourth article of which the Company were " allowed to fortify Calcutta in such man-

Independency of the Company's Settlement at Calcutta, established by the Treaty with

* ORME, V. 2, p. 18.

† ORME, V. 2, p. 17.

‡ Through the embassy of Messrs. SURMAN and STEPHENSON ; accompanied by an Armenian merchant, named SURHAD, and another surgeon Mr. HAMILTON, whose medical assistance to the Emperor promoted the object of their embassy. See ORME, Vol. II, page 19, &c. and a copy and translation of the firman granted by FURUKHSEER, in the Appendix to " BOLTS on India Affairs."

|| Corresponding grants, literally " according to order." Translations of them, and of the firman, are annexed to the first report of the select committee, appointed by the House of Commons in 1772, to enquire into the nature, state, and condition of the East India Company and of the British affairs in the East Indies. The reports of this committee, and of the committee of secrecy appointed in the following year, contain much authentic and valuable information respecting the acquisition and early administration of these provinces, not readily to be found elsewhere,

SURAJ-OO-DOU-
LAH, in 1757.

And Provinces
of Bengal, Be-
har, and Orissa,
virtually subju-
gated to the So-
vereignty of
Great Britain by
the battle of
Plassey, and its
consequences.

But not ac-
knowledgeed by
the previous
Treaty with Jâ-
fur Aly Khân.

Districts of
Burdwan, Mid-
napore, and
Chittagong, &c.

ner as they might esteem proper," and by the fifth article of which it was stipulated, " that siccas be coined at Alinagur (Calcutta) in the same manner as at Moorshedabad;" concluding with a " promise in behalf of the English nation, and of the English Company, that from henceforth all hostilities shall cease in Bengal, and the English will always remain in peace and friendship with the Nawáb, as long as these articles are kept in force, and remain unviolated *;" may be considered to have established the independency of the Company's settlement at Calcutta. And the victory gained at the memorable battle of Plassey, on the 23d June of the same year, with the consequent elevation of JÂFUR ÂLY KHA'N to the government of Bengal, Bahar, and Orissa, by Colonel CLIVE, and the British army under his command, must be deemed a virtual subjugation of those provinces to the arms and sovereignty of Great Britain. In the previous treaty however, which had been entered into with JÂFUR ÂLY KHA'N †, the cession of the French factories, with an extension of the Company's zemindary, six hundred yards without the ditch of Calcutta, and to the land lying south of Calcutta as far as Culpee, had alone been stipulated for; besides a confirmation of the former agreement with SURAJ-OO-DOU'LAH, and a consideration for the public and private property plundered by him at the capture of Calcutta in 1756; with the further conditions, that whenever the Nawáb should demand the assistance of the English he should be at the charge of maintaining them; and that he should not erect any new fortifications below Hooghly, near the river Ganges.

IN the treaty concluded with the Nawáb MEER MOHUMMUD CA'SIM KHA'N, on the 27th September 1760, it was agreed, that

* A translation of this treaty is inserted in the appendix to " VERELST's state of Bengal," and in other publications.

† On the 4th June 1757. The work mentioned in the preceding note contains a translation of this treaty also.

the *Neeabut* * of the Soobahdary of Bengal, Bahar, and Orissa, should be conferred upon him; and that he should succeed JÂFUR ÂLY KHA'N in the government; that the English army should be ready to assist him in the management of all affairs, and that the lands of the chuklahs (districts) of Burdwan, Midnapore, and Chittagong, should be assigned for all charges of the Company, and the army, including provisions for the field. The nature of this assignment is further explained in the *funnuds* from the Soobahdar, wherein the above districts are stated to be granted to the English Company for the maintenance of a body of troops, to be entertained for the protection of the royal dominions; and the landholders, tenants, and public officers, are required to attend and pay the stated revenues, to the persons appointed by the English Company; and implicitly submit in all things to their authority. This therefore was a full and complete cession of the three districts specified; and in the treaty with JÂFUR ÂLY KHA'N, for his reinstatement, dated the 10th day of July 1763†, he "granted and confirmed to the Company, for defraying the expences of their troops, the chuklahs of Burdwan, Midnapore, and Chittagong which were before ceded for the same purpose."

ced by Cásim
Âly Khán, in
1760.

And cession
confirmed by
treaty with Jâ-
fur Âly Khán,
in 1763.

AFTER the expulsion of CÁSIM ÂLY KHA'N, and the decisive battle of Buxar on the 23d October 1764, which, by the defeat of SHOOJÂÂ-OO-DOULAH, Soobahdar of Oud, finally established the British power to the banks of the Caramnassa; and placed under its protection the unfortunate SHÂH ÂÂLUM, nominal successor to the throne of Delhy; the Dewany of Bengal, Bahar, and Orissa, including the administra-

British Power
finally establish-
ed by the bat-
tle of Buxar.

Dewany grant
obtained from
the King, Shâh
Âalum, in 1765.

* Station of Deputy. Translations of the treaty, and of the *funnuds* issued in pursuance of it, will be found in the appendix to the treatise before mentioned. The *musnud* of the Soobah being afterwards abdicated by JÂFUR ÂLY KHA'N, MEER MOHUMMUD CÁSIM, otherwise called CÁSIM ÂLY KHA'N, was raised to it, by Mr. VANSITTART and Colonel CAILLAUD, on the 20th October 1760.

† See the Appendix before noticed.

With confirma-
tion of former
cession and grant
from the Soobahdars.

Agreements
with Nujum-
oo-Doulah, in
1765.

tion of the public revenue, and of civil justice, with the whole of the powers exercised by the Soobah Dewan, under the Mogul constitution; and in this instance, the further special privilege of retaining the surplus revenue of the above provinces, after remitting the sum of twenty-six lacks of rupees per annum to the royal treasury, and providing for the expences of the Nizamut; was granted, as a free gift and ultumgha*, to the Company, by firmans from the King dated the 12th August 1765. A firman was also granted, at the same time, for the chuklahs of Burdwan, Midnapore, and Chittagong, ceded by CÂSIM ÂLY KHA'N; and for the twenty-four pergunnahs, of which the zemindarry right had been granted by JÂFUR ÂLY KHA'N; confirming them to the Company, as a free gift and ultumgha, in perpetuity. The Nuwâb NUJUM-OO-DOU'LAH, (who, on the death of his father JÂFUR ÂLY KHA'N in February 1765, had succeeded to the Soobahdarry of Bengal, Bahar and Orissa, under an agreement† to commit the chief management of all affairs to a Naib Soobahdar, appointed with the advice of the Governor and Council; as well as to appoint and dismiss all officers employed in the collection of the revenues, with the approbation of the Governor and Council;) by a further agreement, bearing date the 30th September 1765, acknowledged the King's grant of the Dewany to the Company; and agreed to accept the annual sum of ficca rupees 53,86,131 as an adequate allowance for the support of the Nizamut, viz. rupees 17,78,854 for his own household expences, servants, &c. and the remaining 36,07,277 for the maintenance of such horses, sepoy, peons, burkundazes, &c. as might be thought necessary for his sewary and the

* A royal grant in perpetuity, under the Emperor's red seal, from which its name is derived. Translations of the firmans issued for the three provinces, separately and collectively; for the districts ceded by CÂSIM ÂLY KHA'N; and for the zemindarry of the twenty-four pergunnahs obtained by the first treaty with JÂFUR ÂLY KHA'N; are included in VERELST's appendix; as well as in the appendix to the first report of the select committee, 1773.

† Executed on the 25th February 1765. See translations of this, and of his further agreement in the same year, No. 52 and 60, in VERELST's appendix; also in the appendix to the first report of the select committee, 1773.

support of his dignity; should such an expence (the amount of which, not exceeding the above sum, to be disbursed through the Naib chosen by the English government;) be hereafter found requisite.

FROM this period the Nazim of Bengal, though, from motives of justice and expediency, allowed to retain the name, and in some measure the dignities, of his office, can be regarded only as a pensioner of state. The civil and military power of the country, with the resources for maintaining it, were transferred to the East India Company; and through their means, to the British Empire*. It was not however judged advisable, either by the local government, or by the Court of Directors, and perhaps was not practicable in the actual state of the Company's service, at the time of their acquiring the Dewany, to vest the immediate administration of the revenue, or of civil and criminal justice, in European officers†. A resident at the Durbar, who inspected the management of the Naib Dewan, MOHUMMUD RUZĀ KHĀN, and his coadjutors, DOOLUBRAM and JUGUT SEET, at Moorshedabad; and the chief of Patna, who superintended the collections of the province of Bahar, under the immediate management of SHITĀB RĀY; maintained an imperfect control, for five years, over the civil administration of the districts included in the Dewany grant; whilst the zemindary lands of Calcutta, and the twenty-four Pergunnahs, and the ceded districts of Burd-

The Nazim of Bengal, a state pensioner, only from this period.

The civil and military power transferred to the East India Company; and to the British Empire.

Native administration continued, under an imperfect European control, from 1765 to 1772.

* That the sovereignty of the British crown and legislature extends to all acquisitions made by the East India Company, has never been questioned; and it has been determined by the House of Commons "that all acquisitions, territories &c. made by arms, or by treaty, by the subjects of the realm, do, of right, belong to the State." But this decision does not affect the legal acknowledged title of the Company to all proprietary rights acquired by purchase, or by any other lawful means, except by arms or treaty, under their perpetual incorporation by Charter, founded upon Acts of Parliament. Vide "Plans for the Government and Trade of Great Britain in the East Indies." P. 190, &c.

† See the reasons fully detailed in the correspondence between the Honorable Court of Directors, and the President and Council, or Select Committee, at Fort William; contained in the reports of the House of Commons already referred to: also in the first Chapter of VERELST's Narrative.

Office of Naib
Dewan abolished,
under orders from the
Court of Directors; and the
Company's Servants employed
in executing the
Dewany functions.

Measures adopted,
and judicial arrangements
made, in consequence.

Acts of the British
Legislature, which relate to
the subject of
this section.

wan, Midnapore, and Chittagong, were superintended by the covenanted servants of the Company. In 1770, European supervisors were appointed, with powers of controlling the native officers employed in collecting the revenue, or administering justice, in different parts of the country; and councils, with superior authority, were at the same time established at Moorshedabad and Patna, subordinate to the Supreme Council at the Presidency. It was not however till the year 1772, when, in consequence of the determination of the Court of Directors *, “to stand forth as Dewan, and by the “agency of the Company’s servants to take upon themselves “the entire care and management of the revenues,” the Office of Naib Dewan was abolished; that the efficient administration of the internal Government of these provinces was committed to British agency. No time was then lost in adopting measures to correct abuses; in providing against undue exactions; and in making such arrangements as circumstances admitted, for a more regular distribution of justice. The committee of circuit, headed by the Governor (Mr. HASTINGS,) digested a plan for this purpose; the rules of which were stated to have been framed with a view to adapt them “to “the manners and understanding of the people, and exigencies “of the country, adhering, as closely as possible, to their ancient usages and institutions †;” and which, with the regulations subsequently passed, for the establishment and jurisdiction of courts of civil justice, will be more particularly noticed in the next section of this analysis.

In the mean time it is necessary to mention concisely the acts of the British Legislature, which have an immediate relation to the subject of the present section; commencing with the regulating act of 1774, which was founded on the inquiry of

* Communicated in their letter to the President and Council at Fort William, dated 28th August 1771. Vide Fifth Report of the Committee of Secrecy, 1773.

† Vide Appendix No. 2, to the Fifth Report of the Committee of Secrecy, 1773.

Parliament, relative to the management of the affairs of the East India Company, made in the two preceding years.

By this Statute (13 GEORGE III, Chapter LXIII,) it was enacted, “ that for the government of the presidency of Fort William in Bengal, there should be appointed a Governor General, and four Counsellors; and that the whole civil and military government of the said presidency, and also the ordering, management, and government of all the territorial acquisitions and revenues in the kingdoms of Bengal, Bahar, and Orissa, shall, during such time as the territorial acquisitions and revenues shall remain in the possession of the United Company, be vested in the said Governor General and Council; in like manner, to all intents and purposes whatsoever, as the same are, or at any time heretofore might have been, exercised by the President and Council, or select Committee, in the said kingdoms.” The Governor General and Council were further invested with the power of superintending and controlling the government and management of the Presidencies of Madras, Bombay and Bencoolen; under certain restrictions; and the King was empowered “ to erect and establish a Supreme Court of Judicature at Fort William, to consist of a Chief Justice and three other Judges, being Barristers of England or Ireland of not less than five years standing;” instead of the Mayor’s Court, established by Letters Patent from His Majesty GEORGE II; which had been found insufficient for the due administration of justice in the actual state and condition of this presidency.

By the Statute above mentioned, and by the subsequent explanatory act of 21 GEORGE III, Chapter LXX, which more accurately defined the jurisdiction of the Supreme Court; with a reservation of the laws and usages of the native inhabitants of Calcutta in cases of “ inheritance, and succe-

The laws of England extended to this country, as far as applicable, by the statute above mentioned, which established the Supreme Court at Calcutta; and

“ fion

By the subsequent acts, 21 Cap. LXX, 24 Cap. XXV, and 26 Cap. LVII, of His Majesty.

“ fion to lands, rents, and goods, and all matters of contract and dealing between party and party, as well as the rights and authorities of fathers and masters of families;” the benefits of the laws of England, as far as applicable to this country, were extended by the legislature to all persons residing within the town of Calcutta; as well as to British subjects (natives of Great Britain, or their descendants) resident in any part of the provinces of Bengal, Behar, and Orissa. Certain descriptions of the natives of India, though not inhabitants of the town of Calcutta, on account of their being employed by the Company, or by any of His Majesty’s British subjects, are also declared, by the acts above mentioned, amenable to the jurisdiction of the Supreme Court, in criminal cases; as well as in actions for wrongs or trespasses; and in civil suits by agreement of parties, in writing, to submit the same to the decision of that Court; the jurisdiction of which is further extended over all His Majesty’s British subjects in India, or elsewhere within the limits of the Company’s exclusive trade, by the Statutes 24 GEORGE III, Chapter XXV, and 26 GEORGE III, Chapter LVII.

More general introduction of British laws incompatible with local circumstances.

BUT the fixed habits, manners, and prejudices, and the long established customs of the people of India, formed under the spirit and administration of an arbitrary Government, totally opposite in principle and practice to that of England, would not admit of a more general application of British laws to the inhabitants of this country; who not only are ignorant of the language in which those laws are written; but could not possibly acquire a knowledge of our complex, though excellent, system of municipal law; composed, in part, of general and local English customs; partly of the civil and canon laws, adopted in particular jurisdictions; and partly of the voluminous statutes, enacted by the King’s Majesty, with the advice and consent of Parliament, during a period of more than

than five hundred years *. The impossibility of introducing English laws, as the general standard of judicial decision in these provinces, without violating the fundamental principle of all civil laws, that they ought to be “ suitable to the genius of the people, and to all the circumstances in which they may be placed †,” has been ably stated by Mr. VERELST ‡, whose local knowledge and character (unfalsified amidst universal corruption, as testified, to his honor, by Lord CLIVE) entitles his opinion to respect. His sentiments are also supported by those of Sir JOHN SHORE (now Lord TEIGNMOUTH), whose perfect acquaintance with the inhabitants of India, added to his high and well-merited reputation, his eminent public and private virtues, must ever give weight to his deliberate suggestion, that “ the grand object of our government in this country should be to conciliate the minds of the natives; by allowing them the free enjoyment of all their prejudices; and by securing to them their rights and property ||”. Moreover, when the provinces of Bengal, Bahar and Orissa, were virtually conquered by the British arms, as well as when the civil government of them was formally vested in the Company, by the Dewany grant, and the agreement with the Nuwáb NUJUM-OO-DOU’LAH in 1765, the inhabitants, Mahomedans as well as Hindoos, were in possession of their respective written laws; under which they had acquired property, by descent, purchase, gift, and other modes of acquisition; and which, from their religious tenets and prejudices, they had been educated and habituated to regard and venerate as sacred §. The Mahomedan government, which preceded

Written laws
in force when
these provinces
were acquired
by the Compa-
ny.

* See BLACKSTONE’S third Introductory Section, on “ the laws of England” P. 84.

† VATTTEL, Book I. Cap. III. Also MONTESQUIEU’S spirit of Laws. Book I. Cap. III. *et passim*.

‡ In the fifth Chapter of his “ State of Bengal,” expressly upon this Subject.

|| See his “ Remarks on the mode of administering justice to the natives in Bengal; and on the collection of the revenues,” printed in the sixth volume of “ India Papers,” 1787.

§ Let it not be forgotten, in justice to Mr. HASTINGS, that the knowledge we possess of these laws, originated from his liberal, and politic, encouragement to the compilation, and translation, of a code of Hindoo Law; and to the translation of an approved commentary upon the Mahomedan Law. HALHED’S version of the former, made through a Persian medium, is now,

preceded the British authority in India, had indeed established its own criminal law, to the exclusion of that of the Hindoos. But from the long period, during which it had prevailed, it was, (in its principal and specific provisions at least) become generally known; and afforded, as far as it was regularly administered, a settled uniform rule for criminal prosecution, trial, and punishment.

Wise provisions of the British legislature in consequence.

THE British legislature therefore, when its attention was called to examine and regulate the management of the affairs of the East India Company, as set forth in the preambles to the acts of His present Majesty already referred to; instead of extending the local and complicated laws of England to the remote, populous, and long civilized territories, which had been gradually acquired by the East India Company, under former Acts of Parliament, and Charters from the King; wisely resolved to limit the administration of English law, over persons who, from their distant situation, and other circumstances, could not be admitted to the whole of the rights and privileges of British subjects*; and judged it sufficient to enact the salutary provisions contained in those Statutes; by the former of which (13 GEORGE III, Chapter LXIII, Sections 36 and 37,) it was declared lawful "for the Governor General and Council

13 George III. Cap. LXIII, § 36, 37.

now, in a great degree, superseded by the "Ordinances of Menu" and "Digest of Hindú Law," derived immediately from the Sanscrit, by the talents, knowledge, and labours of Sir WILLIAM JONES, and Mr. H. T. COLBROOKE; but Mr. HAMILTON's version of the "Hedayat," undertaken at the desire of Mr. HASTINGS, is still the only work, published in English, on the Mosulman Law; except the short tracts on inheritance, translated by Sir W. JONES; (who unhappily did not live to complete and illustrate the digest of Mahomedan and Indian Law, which had been commenced under his direction;) and SALE's version of the Coran, which, however accurate and valuable, is not calculated for legal reference.

* Were further authorities necessary, besides those which have been quoted, to shew the impolicy of extending the operation of English laws in India, beyond the limits to which they are now confined; and within which they are administered with the greatest public advantage, by the Supreme Court of Judicature at Calcutta; Mr. HASTINGS, the Marquess CORNWALLIS, and indeed every experienced person, who has held any public station in India, might be likewise appealed to. But the Legislature itself is evidently convinced of this truth; and there can be no doubt that it will be confirmed, as opportunity may offer, by the present intelligent and public spirited Judges of the Supreme Court; whose object has been rather to meliorate, than extend, its influence; to check expence and delay, and thereby to promote its means of justice, rather than to enlarge its jurisdiction.

" of

“ of the United Company’s settlements at Fort William in
 “ Bengal, from time to time, to make and issue such rules, or-
 “ dinances, and regulations, for the good order and civil go-
 “ vernment of the said United Company’s settlement at Fort
 “ William aforeaid ; and other factories and places subordinate,
 “ or to be subordinate thereto, as shall be deemed just and
 “ reasonable ; such rules, ordinances, and regulations not being
 “ repugnant to the laws of the realm.” And by the latter Act
 (21, GEO. III, Cap. LXX, Section 23,) it was enacted “ that the
 “ Governor General and Council shall have power and au-
 “ thority from time to time to frame regulations for the provin-
 “ cial courts and councils ; and shall within six months, after
 “ the making of the said regulations, transmit or cause to be
 “ transmitted, copies of the said regulations to the Court of
 “ Directors, and to one of His Majesty’s principal Secretaries
 “ of State ; which regulations His Majesty in Council may
 “ disallow or amend ; and the said regulations, if not disallow-
 “ ed within two years, shall be of force and authority to direct
 “ the said provincial courts, according to the tenor of the said
 “ amendment, provided the same do not produce any new
 “ expense to the suitors in the said courts.” It was further
 provided in the act first mentioned, that the rules, ordinances
 and regulations made by the Governor General and Council,
 should “ not be valid, or of any force or effect, until the same
 “ be duly registered and published in the Supreme Court of
 “ Judicature, with the consent and approbation of the said
 “ Court ; which registry shall not be made until the expiration
 “ of twenty days, after the same shall be openly published, and
 “ a copy thereof affixed in some conspicuous part of the
 “ court house, or place where the said Supreme Court
 “ shall be held ; and from and immediately after such
 “ registry, as aforeaid, the same shall be good and va-
 lid in law.” But this and other restrictions, in the two
 clauses quoted, must be considered, under the subsequent
 acts of parliament, to have exclusive reference to the town of
 Calcutta, technically, though somewhat inaccurately denomi-
 nated the settlement of Fort William and its subordinate fac-
 tories ;

Governor General and Council empowered to make rules, ordinances, and regulations for the good order and civil government of the Company’s settlement at Fort William.

21, GEO. III.
 Cap. LXX,
 § 23.
 And to frame regulations for the provincial courts and councils.

tories; to provide for the good order of which by a local power to frame any requisite rules and regulations, not repugnant to the laws of England, appears indeed to have been the principal if not the only object of the thirty-sixth, and thirty-seventh sections of the Statute 13, GEORGE III, Chapter LXIII. *

Authority of the Government General, and of the Governments at Fort St. George and Bombay, to make general rules and regulations for the good order and civil government of these settlements further recognized by 33 GEO. III, Chapter LII.

Which has determined the system of government for the British territories in India, under the renewal of the Company's charter in 1793.

THE authority of the Governor General in Council at Fort William, and the subordinate power of the Governor and Council at Fort St. George and Bombay, "to make "any general rule or regulation for the good order and "civil government of those settlements respectively," are further recognized by the Statute 33, GEORGE III, Chapter LII, which defined the constitution and powers of the Board of Control, established by 24, GEORGE III, Chapter XXV, "to "superintend, direct, and control, all acts, operations, and concerns, which in any wise relate to the civil or military government, or revenues, of the British territorial possessions in the East Indies," and has determined the general system of government for the British territories in India; to be conducted, under the renewal of the Company's charter in 1793, by an efficient local authority; subject to high responsibility in England; to the direction and control of the Honorable Court of Directors, and the Board of Commissioners of His Majesty's Privy Council; and to the general superintendence, with such interposition as circumstances may render necessary, of the Parliament of the United Kingdom.

Additional and express sanction given, to the exercise of a local power of legislation at this presidency, by

THE following additional and express sanction, to the exercise of a local power of legislation at this presidency, has also been since declared by the eighth section of the Act 37,

* The various opinions entertained of the extent of the legislative powers, meant to be vested in the Governor General and Council, by the act of 1773, with the uncertainty of even a Committee of the House of Commons, as to the exact intention of the 36th section of that act, may be seen in the first report of the select Committee appointed in 1781, and its Appendix. But the provisions, that the rules and ordinances to be made under that section, should not be repugnant to the laws of the Realm, and should be registered and published in the Supreme Court, with the approbation of that Court, appear applicable only to a jurisdiction where the laws of England are administered. And all necessity for a more extensive construction of any part of the Statute 13, GEORGE III, Ch. LXIII, is now superseded by the explicit declarations of the legislature in 21, GEORGE III, Ch. LXX, and 33, GEORGE III, Ch. CXLII.

GEORGE III, Chapter CXLII, passed on the 20th day of July, 1797: “ Whereas certain regulations for the better administration of justice among the native inhabitants and others, being within the provinces of Bengal, Bahar, and Orissa, have been from time to time framed by the Governor General in Council in Bengal; and among other regulations it has been established and declared, as essential to the future prosperity of the British territories in Bengal, that all regulations passed by Government, affecting the rights, properties, or persons of the subjects, should be formed into a regular code; and printed, with translations in the country languages; and that the grounds of every regulation be prefixed to it; and that the courts of justice within the provinces be bound to regulate their decisions by the rules and ordinances which such regulations may contain; whereby the native inhabitants may be made acquainted with the privileges and immunities granted to them by the British Government; and the mode of obtaining speedy redress for any infringement of the same: and whereas it is essential that so wise and salutary a provision should be strictly observed; and that it should not be in the power of the Governor General in Council to neglect or to dispense with the same; be it therefore enacted, that all regulations which shall be issued and framed by the Governor General in Council at Fort William in Bengal, affecting the rights, persons, or property of the natives, or of any other individuals who may be amenable to the provincial courts of justice, shall be registered in the judicial department, and formed into a regular code, and printed, with translations in the country languages, and that the grounds of each regulation shall be prefixed to it; and all the provincial courts of judicature shall be, and they are hereby directed to be, bound by, and to regulate their decisions by, such rules and ordinances as shall be contained in the said regulations; and the said Governor General in Council shall annually transmit to the Court of Directors

“ of

“ of the East India Company, ten copies of such regulations as may be passed in each year; and the same number to the Board of Commissioners for the affairs of India.”

The tenor of the above section adopted by the legislature from Regulation XLI, 1793.

The substance of which is thus incorporated with the laws of the British empire. And is the corner stone of the system founded by Marquess Cornwallis in 1793.

Constitution thereby established for the native inhabitants of this dependent kingdom.

THE tenor, and for the most part, the terms, of the above section, are adopted from Regulation XLI, 1793, intitled “ A regulation for forming into a regular code all regulations that may be enacted for the internal government of the British territories in Bengal;” the substance of which is thus incorporated with the laws of the British empire; and supported upon this firm basis, it may be deemed the corner stone of the system of regulation and polity, for the internal government of these provinces, which was instituted, in the year 1793, by the MARQUESS CORNWALLIS. It may also be justly considered to have established a constitution for the native inhabitants of this dependent subordinate kingdom*, the most beneficial for them, and for the sovereign state, which the situation and circumstances of both will admit. It is impracticable to extend to India, held as a foreign dependency, the laws and constitution of Great Britain. Nor would such laws and constitution, (the inestimable privilege, and dearest right of those who have the happiness to be born and educated under them,) be suitable or acceptable, if they could be so extended, to a people whose “ religion, laws, customs and manners (to use the words of an intelligent, though anonymous writer) † “ have fixed such insuperable barriers to all assimilation, that “ they can never be overcome, if so wild a project should ever

* As Ireland was before the late Union: See BLACKSTONE's fourth section, on the countries subject to the laws of England. His remarks on the state of Ireland, before its Parliament was united with that of Great Britain; on the laws enacted by the superior State, which, being generally calculated for its own internal government, do not extend to its distant dependent territories, bearing no part in the legislature, except when the sovereign legislative power sees it necessary to extend its care to any of its subordinate dominions; and on the nature and constitution of a dependent State, held under what is usually called the right of conquest, but in reason, and civil policy, under an express, or tacit, compact, to treat the conquered, on their acknowledgement of the victor's authority, as subjects; are so pertinent and applicable to the British territories in India, considered as a dependency on the Crown of Great Britain; that they well merit attention; and would have been inserted in this place, if they had not appeared too long for a note.

† The Author of “ a short review of the British Government in India, and of the state of the Country before the Company acquired the grant of the Dewany,” published in 1790.

“ be attempted.” It may however be truly said, that the Acts of Parliament now in force, and the existing codes of regulations, enacted by the governments of Fort William, Fort St. George, and Bombay, (which preserve to Hindoos and Mahomedans their respective laws, in suits regarding succession, inheritance, marriage, and cast, and all religious usages and institutions;) with the provision made for such further laws and regulations as circumstances and experience may, from time to time, shew to be required, have realized and established the system, which, in the well known work, intitled “ Plans for the government and trade of Great Britain in the East Indies,” is stated to combine the “ prevailing opinions respecting the future government of India, and regulation of trade to the East Indies,” viz. “ That a system should be formed, which shall preserve, as much as possibly can be done, their institutions and laws to the natives of Hindoostan; and attemper them with the mild spirit of the British government. That this system should vest in the state its just rights of sovereignty over our territorial possessions in India, of superintending and controlling all matters of a financial, civil, and military nature. And that it should preserve the trade to the Company in all its branches; but give to the executive government a proper authority to regulate their proceedings; bound by a positive responsibility to Parliament.

By Regulation XLI, 1793, before referred to, (which has been since extended to the province of Benares* by Section IV, Regulation I, 1795, and re-enacted for the ceded provin-

Provisions of
Regulation
XLI, 1793.

* The sovereignty of this province was ceded to the Company by the fifth article of the treaty with the Vizeer, ASUF-OO-DOULAH, dated 21st May 1775. But the system of internal administration, adopted in Bengal, Bahar, and Orissa, in 1793, was not extended to Benares till 1795, under an agreement with the Rajah, MAHIPNA'RA'IN, bearing date the 27th October 1794.

ces by Regulation I, 1803*), it is enacted, with other subsidiary provisions, that “ every rule or order that may be passed by the Governor General in Council, regarding the administration of justice, the imposition, or levying of taxes, or of duties on commerce, the collection of the public revenue assessed upon the lands, the rights and tenures of the proprietors and cultivators of the soil, the provision of the Company’s investment, the manufacture of salt, or opium, and generally all regulations affecting, in any respect, the rights, persons, or property, of the natives, or any individuals who may be amenable to the provincial courts of jurisdiction, shall be recorded in the judicial department; and there framed into a regulation, and printed and published;” in a prescribed form, with translations in the current languages of the country. That the regulations passed annually shall be numbered; and divided into sections, and clauses; so as to constitute a regular code. That every regulation shall have a title expressing the subject of it; and a preamble stating the reasons for the enactment of it. That if any regulation shall repeal or modify a former regulation, the reasons for such repeal or modification, shall be detailed in the preamble. And that “ the civil and criminal courts of justice shall be

* By the “ ceded provinces,” are meant the districts of Moradabad, Bareilly, Itawa, Furrukhabad, Kanhpoor, Allahabad, and Gorukhpoor, which were ceded to the East India Company by the Nuwab Vizeer, on the 10th day of November 1801; the territory in Boondelkhund ceded by the Peshwa, on the 16th December 1803; and the districts of Paneeput, Suharunpoor, Alygurh, and Agra, ceded by DOU’LUT RA’O’ SE’NDHEEA, on the 30th December 1803. The latter are also denominated the “ Conquered provinces in the Doab, and on the right bank of the river Jumna.” The regulations for the administration of justice in criminal cases, which had been enacted conformably to the rules prescribed in Regulation I, 1803, for the provinces ceded by the Nuwab Vizeer, have, by Regulation IX, 1804, been extended to the territories ceded by the Peshwa and DOU’LUT RA’O’ SE’NDHEEA; and it has been determined by Government to extend the remaining regulations, enacted for the provinces ceded by the Nuwab Vizeer, to those ceded by the Peshwa and DOU’LUT RA’O’ SE’NDHEEA, with such local modifications as may be found necessary. It has not therefore appeared requisite to distinguish the three descriptions of ceded provinces in this Analysis; except to notice any special provisions for them respectively. For a similar reason, no distinct mention is made of the province of Cuttack, which surrendered to the British Arms on the 14th October 1803; and to which the regulations for criminal justice and police, enacted for Bengal, Bahar, and Orissa, in the manner prescribed by Regulation XLI, 1793, have been extended, by Regulation IV, 1804; except when it is necessary, to specify any local provision for that province.

" guided in their proceedings and decisions by the regulati-
 " ons framed and transmitted to them as directed, and by no
 " other." It is further provided, that in the English regula-
 tions, as well as in the translations of them into the languages
 of the country, the same designations and terms shall be ap-
 plied to the same descriptions of persons and things; in order
 that rights, property, tenures, privileges, deeds, courts, pro-
 cesses, offices, officers, and generally all persons and things,
 may be uniformly described throughout the code. That the
 translator of the regulations, whenever he shall have occasion
 to insert the designation or name of any person, or thing, that
 he may have reason to believe will not be intelligible to the
 natives in general, and which may not have been used, and ex-
 plained, in the translates of any former regulation, shall, in
 the first passage in which such word or term may occur, sub-
 join an explanation of it; that, upon its recurring, no doubt
 may be entertained as to its true meaning and import. That
 he shall also translate the regulations into plain and easy lan-
 guage; and, as far as may be consistent with a preservation of
 the true meaning and spirit of them, shall adopt the idiom
 of the native languages; instead of giving a close and verbal
 translation, which must necessarily be obscure, and often un-
 intelligible. That " one part of a regulation is to be constru-
 " ed by another, so that the whole may stand." That " if any
 " regulation shall be passed, differing from a former regula-
 " tion, either wholly or partially, the new regulation is to
 " be considered a virtual appeal of the old one, as far as it
 " may differ from the latter, provided that the new regu-
 " lation be couched in negative terms; or by its matter ne-
 " cessarily imply a negative." And, lastly, that " if a regu-
 " lation, which rescinds another regulation, is itself afterwards
 " rescinded, the original regulation is to be considered as revi-
 " ved, without any formal declaration to that purpose."

The principles, on which this fundamental regulation was
 grounded,

Principles of
 the above regu-

lation, declared
in its preamble.

grounded, and the objects intended by it, must be obvious, after what has been stated, of the want of a general and published system of municipal law, at the time when this provision for it was made. In the preamble, it is declared “ essential to the future prosperity of the British territories “ in Bengal, that all regulations, which may be passed by go- “ vernment, affecting in any respect the rights, persons, or “ property of their subjects, should be formed into a regular “ code ; and printed with translations in the country languages : “ that the grounds, on which each regulation may be enacted, “ should be prefixed to it ; and that the courts of justice should “ be bound to regulate their decisions by the rules and ordi- “ nances which those regulations may contain.” It is added that “ a code of regulations framed upon the above principles, “ will enable individuals to render themselves acquainted with “ the laws, upon which the security of the many inestimable “ privileges and immunities, granted to them by the British “ government, depends ; and the mode of obtaining speedy “ redress against every infringement of them ; the courts of “ justice will be able to apply the regulations according to “ their true intent and import ; future administrations will “ have the means of judging how far regulations have been “ productive of the desired effect ; and, when necessary, to “ modify or alter them, as from experience may be found “ advisable ; new regulations will not be made, nor those “ which may exist be repealed, without due deliberation ; “ and the causes of the future decline or prosperity of these “ provinces will always be traceable in the code to their “ source.” It may further be observed, that by the enactment of this regulation, and by the institution of civil and criminal courts of justice, to be guided by the regulations framed and published in conformity with it, *and by no other*, an object, which in all countries has been held of the highest importance, for the protection of the person and property of the subject, that of administering justice by the means of judicial officers, independent

Separation of
judicial, from
legislative and
executive au-
thorities, effect-
ed by this re-
gulation, and by
institution of
courts of justice,
on the principles
stated.

independent of the legislative and executive authorities of the state, has been attained and secured for this country, in as great a degree as the circumstances of it admit. Constituted as the courts of justice now are ; and bound as the judges are by oath, “ to administer justice conformably to the regulations, that have been, or may be, passed by the Governor General in Council, to the best of their ability, knowledge, and judgment, without fear, favor, promise, or hope of reward ;” restricted also, as they are by oath, from being concerned, directly or indirectly, in any commercial transactions ; as well as from deriving any “ emoluments or advantages from their stations, excepting such as the orders of government do or may, authorize them to receive ;” and liberal as their fixed and authorized allowances now are, such as to remove every shadow of pretence for deviating, in the slightest degree, from the sacred obligations imposed upon them by their oaths, by the laws and regulations, by the public trusts committed to them, by their honor and character, and by every principle of religion and morality ; it may be pronounced with confidence, that effectual and sufficient provision (under the vigilant care of government to select proper persons for administering the laws, and to make public examples of any who may dare to violate them ;) has been made, by the system now established, to extend to the numerous and industrious Inhabitants of this remote, but valuable portion of the British Empire, the important benefit, enjoyed by the European subjects of the same state ; a pure, and impartial administration of justice : or as emphatically expressed in the recent address of Marquess WELLESLEY to the students of the College of Fort William ; “ that primary object of all good government, the greatest blessing attainable by any people, an impartial administration of just law.”

That the Governor General in Council may be apprized of such general, or local, regulations, as the magistrates, or any
of

Provisions for
the proposition
of new regula-
tions to Go-
vernment.

of the civil or criminal courts of judicature, may deem it advisable to propose, respecting matters coming within their cognizance; The judges of the whole of those courts, as well as the magistrates of the several zillahs (districts) and cities, are empowered by Regulation XX, 1793, (extended to Benares by Regulation XXXIX, 1795, and re-enacted for the ceded provinces by Regulation IX, 1803,) to propose regulations regarding any matters coming within their cognizance; under prescribed rules for drawing out the same in the form directed by the regulation before noticed; and for submitting them, when so prepared, through the proper official channel, for the sentiments of the superior courts, in the first instance; and ultimately for the consideration of the Governor General in Council; to whom is reserved a discretion to reject or adopt any regulation that may be submitted to him; or to pass such other regulation as may appear to him proper. The same power of proposing any new regulation, regarding matters within the cognizance of the officers of revenue, is vested in the Board of Revenue and the collectors of districts, by Section XXXI, Regulation VII, 1799, (extended to Benares by Section XXVIII, Regulation V, 1800; and to the ceded provinces by the last Section of Regulation XXVI, 1803;) and though not expressly provided for, the same means of bringing forward any new regulations, which local knowledge and experience may suggest, are understood to be open to every other department of the public service. By Regulation X, 1796, (re-enacted for the ceded provinces by Regulation XXII, 1803,) it is further provided that in all "cases of difference of opinion on the meaning and construction of the regulations" between the zillah and city judges and magistrates, and the judges of the provincial courts of appeal and circuit, a reference, if desired by the subordinate judge and magistrate, after stating his objections to the provincial court, and receiving their precept in reply thereto, shall (without however suspending the execution of such

and for securing
an uniform con-
struction of the
existing regu-
lations.

for the purpose
of securing the
uniformity of
the regulations
in all parts of
the country.

such precept) be made to the superior civil court, of sudder dewanny adawlut; or to the superior criminal court, of nizamat adawlut. Copies of the precepts issued, and returns made, with such other papers as may be necessary for information of the circumstances of the case, are directed to be transmitted, whenever such references may occur, to the sudder dewanny adawlut or nizamat adawlut: and the determination of those courts, “ who are empowered to prescribe the forms and conduct to be observed by the provincial, zillah, and city courts of dewanny adawlut, the courts of circuit, and the zillah and city magistrates, in all cases provided for by the regulations, agreeably to their construction thereof, is to be held final and conclusive. Should any doubt occur to the sudder dewanny adawlut, or the nizamat adawlut, with respect to the meaning of any part of the regulations, or should it appear to them, on occasion of any reference from the provincial, zillah, or city courts, the courts of circuit, or the zillah or city magistrates, that the regulations do not sufficiently provide for the case submitted to their decision, they are, in the former case, to report the circumstances of it to the Governor General in Council, that a new regulation may be framed in explanation of such doubt; and in the latter case, are to propose a new regulation in the manner prescribed by Regulation XX, 1793.”

It would be superfluous to offer any further comment, on the wisdom, policy, and utility, of the general legislative provisions, which have been thus enacted; and which constitute the ground-work of the existing system of internal government in these provinces; founded, as already observed, upon the still broader basis of British law; and it may be said, cemented with the spirit of the British constitution. It appeared proper, in this preliminary section, to state concisely, the gradual establishment of sovereign authority in the Company's territorial possessions under this presidency; the relative situa-

tion

Concluding observation on the legislative provisions, recited in this section.

tion of these possessions, as forming a constituent part, and dependent kingdom, of the British empire, governed, for political and commercial purposes, through the managers, and local agents, of a chartered corporation, under the control of the executive and legislative powers of the state; and the declared sanction of the legislature, which has given the force and authority of law, within the jurisdiction of the Governor General in Council at Fort William, to the regulations that form the subject of this analysis. It will be sufficient to add the following apposite remark of an eminent author on the law of nature and nations.* “ There is but one way of forming a civil code, either consistent with common sense, or that has ever been practised in any country; namely, that of gradually building up the law, in proportion as the facts arise which it is to regulate.” The regulations which have, from time to time, been enacted by the British Government in India, illustrate the truth of this remark; which also satisfactorily explains, why no code of laws could, at once, be rendered so complete, and perfect, as not to require addition or alteration.

* Sir JAMES MACKINTOSH, in his discourse on the study of the law of nature and nations, introductory to a course of lectures on that science. From the extensive knowledge displayed in this discourse, as well as from its classical language, and the known abilities of the writer, it is much to be regretted that his course of lectures, which, it cannot be doubted, exemplified ample grounds of the conviction expressed by him, “ that public lectures, which have been used in most ages and countries, to teach the elements of almost every part of learning, were the most convenient mode in which these elements could be taught; that they were the best adapted for the important purposes of awakening the attention of the student; of abridging his labour; of guiding his enquires; of relieving the tediousness of private study; and of impressing on his recollection the principles of science;” have not been published for general information and instruction.



SECTION II.

COURTS OF CIVIL JUSTICE.

AN eminent writer upon political œconomy * has stated the first duty of the sovereign, in every civilized state, to be “that of protecting the society from the violence and invasion of other independent societies;” and his second duty to be “that of protecting, as far as possible, every member of the society from the injustice or oppression of every other member of it; or the duty of establishing an exact administration of justice.” The former of these obligations is foreign to the subject and design of this analysis. Of the latter, such part as relates to the duty of enacting and publishing an equitable system of law, has been set forth, imperfectly, but, it is hoped, sufficiently for the object intended, in the preceding section. The purpose of this will be, to consider the second branch of the public obligation stated, that of providing for the due execution of the laws; particularly of those which relate to the redress of private wrongs, or civil justice; the consideration of such as regard the punishment and prevention of public wrongs and offences, or criminal justice and police, being reserved for the succeeding section.

Obligation upon the ruling power, in every state, to administer justice.

Civil justice the subject of the present section.

IN every country, and under every form of government, an efficient administration of justice, to protect from violence, and secure from injury, the natural and civil rights of the subject, is manifestly the duty, as it is also the evident interest, of the governing power. “This obligation flows from the end,

The due administration of a just system of law, as much the interest, as it is the duty, of the governing power.

* A. SMITH, in the fifth Book of his admirable “inquiry into the nature and causes of the wealth of nations.”

and very contract of civil society*." Protection and allegiance are reciprocal†. And whether the British possessions in India were acquired by grant, cession, or conquest, the natives are equally intitled, in return for their obedience and contributions, to the common right of all subjects, security of person and property; as far as the same can be maintained by a system of good laws well administered. Such an administration must, at the same time, promote the prosperity of the country; the advantages to be derived from it by the East India Company; and the permanent interests and policy of the British Nation. In proportion as the inhabitants are secured against wrong to their persons and property, their industry will be exerted in the extension of agriculture, manufactures, and commerce. As these are extended, the resources of the country must be increased. And if the people experience the benefits of good government, in the free exercise of their religion; in the protection of their persons from injury; and in the safe enjoyment of their property; they must be better satisfied with the government under which they enjoy these substantial benefits; than they could be under a system of persecution, oppression, and injustice; or under any system less calculated to produce their ease and happiness.

Influence of
above principles
on the British
administration
in India.

THESE obvious truths, and just principles, appear to have influenced, in a greater or less degree, the British administration in India, from the time of its first operative interference in the government of the country; and there can be no ground of doubt, that justice has been more impartially administered in the civil courts established since the year 1772, when it was resolved (as already noticed) to execute the functions incident to the dewany grant of 1765, through

* VATTTEL, Book I. Cap. XIII.

† BLACKSTONE, Book I. Cap. X. "Allegiance is the tie, or *ligamen*, which binds the subject to the King, in return for that protection, which the King affords the subject."

the agency of the Company's servants; than in the courts before established by the Mahomedan government, of which a Committee of the House of Commons, who made the state of the former judicatures in Bengal a special object of their enquiry, reported in the year 1773, that " so far as they were
 " able to judge, from all the information laid before them, the
 " subjects of the Moghul empire in that province derived
 " little protection or security from any of these courts; and
 " that, in general, though forms of judicature were established,
 " and preserved, the despotic principles of the government
 " rendered them the instruments of power, rather than of
 " justice; not only unavailing to protect the people; but
 " often the means of the most grievous oppressions under the
 " cloak of the judicial character." The committee further stated it to be " the general sense of all the accounts they had
 " received respecting these courts; that the administration of
 " justice, during the vigour of the ancient constitution, was
 " liable to great abuse and oppression; that the judges generally lay under the influence of interest; and often under
 " that of corruption; and that the interposition of government, from motives of favor or displeasure, was another frequent cause of the perversion of justice *." This authoritative statement is corroborated by every well informed writer on the Mahomedan government of Bengal, after it ceased to be directed by the regular control, and vice royal appointment, of the Emperor; from SCRAFTON, who, in his first letter †, states, " the government of the Moors borders so near on
 " anarchy, you would wonder how it keeps together;" to Governor VERELST, who, in his instructions to the supervisors (appointed in 1770) observes: " It is difficult to determine whether the original customs, or the degenerate manners, of the Mussulmen, have most contributed to confound
 " the principles of right and wrong in these provinces. Cer-

Report of a Committee of the House of Commons on the former judicatures in Bengal.

Coroborated by writers on the Mahomedan government of Bengal, after it became independent of imperial control.

* Vide sixth report of the committee of secrecy, 1773.

† On the government of Hindoostan, published in 1763.

“tain it is that almost every decision of theirs is a corrupt bargain with the highest bidders.*”

Plan of the committee of circuit, for the administration of justice, adopted in 1772.

IMMEDIATELY after the receipt of orders from the Honorable Court of Directors, to enter upon the duties of the dewanny office, a committee was appointed, consisting of the Governor Mr. HASTINGS, and four Members of the Council; who, on the 15th August 1772, proposed a plan for the administration of justice, which, on the 21st of the same month, was adopted by the government. Under this plan, which contains some original provisions yet preserved in our judicial code, mofussil dewanny adawlut, or provincial courts of civil justice, under the superintendence of the collectors of the revenue, were established in each district. “All disputes concerning property, real or personal, all causes of inheritance, marriage, and cast, all claims of debt, disputed accounts, contracts, and demands of rent,” were declared cognizable by these courts; excepting the right of succession to zemindaries and talookdaries; the decision of which was reserved to the President and Council. A court of sudder dewanny adawlut, or superior civil court, was at the same time instituted at the presidency, under the superintendence of three or more Members of the Council, to hear appeals from the provincial courts, in causes exceeding five hundred rupees. It was declared that, “as nothing is more conducive to the prosperity of any country, than a free and easy access to justice and redress, the collectors shall at all times be ready to receive the petitions of the injured.” The custom of levying *chout*, *dussuttra*, *punchuttra*, or any other fee or commission, on the amount of money recovered, or *etlak* on the decision of

* That the same favorable comparison may be made, between the system of internal government now established in the provinces recently ceded by the Nuwab Vizeer, and that which subsisted before the cession in 1801; is abundantly shewn by an official report, dated the 10th February 1805, from Mr. HENRY STRACHEY, one of the judges of the court of appeal and circuit for those provinces; who remarks—“It is scarcely possible for an unprejudiced mind to doubt the superiority of our Government to the native Governments. To do so, is to compare anarchy, oppression, and wretchedness, with justice, moderation, peace and security.”

causes,

causes, as well as all heavy arbitrary fines, " was for ever abolished." And, besides provisions for local investigations regarding disputed lands, boundaries, &c. and for the settlement of accounts, partnerships, and other matters, by arbitration, when the parties might agree thereto; it was provided " that in all " suits regarding inheritance, marriage, cast, and other religious usages or institutions, the laws of the Koran with " respect to Mahomedans, and those of the Shaster with respect to Gentoos, shall be invariably adhered to. On all " such occasions the Moulavies or Brahmins shall respectfully attend to expound the law, and they shall sign the " report, and assist in passing the decree."

IN 1774, an alteration took place in the constitution of the mofussil dewanny adawluts, by the recal of the collectors, and appointment of provincial councils for the divisions of Calcutta, Burdwan, Dacca, Moorshedabad, Dinagepore, and Patna. The administration of civil justice was vested in the Council at large; but exercised by one of the members in rotation. This plan continued in force till the 28th March 1780, when the Governor General and Council resolved, that, for the more effectual and regular administration of justice, distinct courts of dewanny adawlut should be established in the six divisions abovementioned; to be independent of the provincial councils; and to take cognizance of all claims of inheritance to zemindaries, talookdaries, or other real property; or mercantile disputes; all matters of personal property (with the exceptions subsequently noticed) and all disputes about the limits of landed property within the town of Calcutta; and Punchawungong, or the fifty-five villages surrounding it. But the provincial councils were to try and decide, as heretofore, all causes having relation to the public revenue, as well as all demands of landholders and farmers on their under-renters, or others, for arrears of rent; and all complaints from ryots, and tenants of every description,

Alteration in
the constitution
of the civil
courts, on the
appointment of
provincial
councils, in
1774.

Further alteration,
by the establishment of
distinct courts,
in 1780.

tion, for irregular or undue exactions of rent or revenue. The provincial councils were further to try and decide all disputes relative to boundaries; except within the town of Calcutta and Punchawungong (which were excepted as, from their number and intricacy, being likely to occupy too much of their time) and also all claims for money lent to zemindars, talookdars, and chowdries, for the payment of the revenue. The further provisions for the administration of justice, made at this period, are detailed in a plan, recorded on the proceedings of the Governor General and Council, under date the 28th March 1780; and printed in the Appendix to the First Report from the Select Committee of the House of Commons, appointed in 1781.

New constitution of fudder dewanny adawlut, in 1780.

Regulations passed on the 3d November 1780.

Incorporated, in a revised code, passed on the 5th July 1781.

Objects of this code.

THE avocations of the Governor General and Council having prevented their sitting in the court of fudder dewanny adawlut, a separate judge (Sir E. IMPEY) was, on the 18th October 1780, appointed to the charge and superintendency of that court. And, on the 3d November following, thirteen articles of regulations, prepared by the judge, and approved by the government, were passed for the guidance of the civil courts, superior and inferior; which were afterwards incorporated, with additions and amendments, in a revised code, comprizing ninety five articles, of "Regulations for the administration of justice in the courts of mofussil dewanny adawlut, and in the fudder dewanny adawlut, passed in Council the 5th of July 1781;" the declared objects of which were "the explaining such rules, orders and regulations, as may be ambiguous; and revoking such as may be repugnant or obsolete; to the end that one consistent code be framed therefrom; and one general table of fees established in and throughout the said courts of mofussil dewanny adawlut; by which a general conformity may be maintained in the proceedings, practice and decisions of the several courts; and that the inhabitants

" of

“ of these countries may not only know to what courts, and
 “ on what occasions, they may apply for justice; but, see-
 “ ing the rules, ordinances and regulations, to which the
 “ judges are by oath bound invariably to adhere, they may
 “ have confidence in the said courts; and may be apprized
 “ on what occasions it may be advisable to appeal from the
 “ courts of mofussil dewanny adawlut to the court of
 “ fudder dewanny adawlut; and knowing the utmost of the
 “ costs which may be incurred in their suits, may not, from
 “ apprehension of being involved in exorbitant and unfore-
 “ seen expences, or of being subjected to frauds, or extortion of
 “ the officers of the court, be deterred from prosecuting their
 “ just claims.”

UNDER these regulations (which were printed with transla-
 tions, and which constitute a principal foundation of the rules
 now in force, relative to the administration of civil justice,
 though including a material deviation from the present system,
 with respect to the cognizance of rent and revenue causes,
 as will be more fully stated) all suits concerning the inheritance
 or succession to zemindaries, talookdaries or other landed
 property, or concerning any right, title, or claim of posses-
 sion thereto, or the bounds and limits thereof, and concern-
 ing debts, accounts, contracts, or property of any nature
 whatsoever, real or personal, (exclusive of demands for ar-
 rears of rent, or complaints for exactions of rent, and all causes
 relative to the public revenue, the cognizance of which was
 left to the collectors, who had been substituted for the
 provincial councils) were made cognizable, as heretofore, by
 distinct courts of mofussil dewanny adawlut; which had
 been augmented to the number of eighteen, on the 6th April
 preceding, in consequence of experienced inconvenience
 from the too extensive jurisdiction of the six before institut-
 ed; and the judges of which were unconnected with the
 revenue department; except in the districts of Chittra, Bha-
 gulpore,

Jurisdiction of
 the civil courts,
 established un-
 der these regu-
 lations.

Superintendence of the fudder dewanny adawlut reassumed by the Governor General and Council, in 1782.

And the powers of this court, declared to be a legal court of record, confirmed by the Statute 21, George III, Cap. LXX, with an appeal to the King in Council, in suits for 500l. and upwards.

Change of system in 1787; by uniting the offices of judge and collector in the same person; except in the three cities.

Revised code of regulations adapted to this change.

gulpore, Islamabad and Rungpore; where, for local reasons, the offices of judge and collector were vested in the same person; but with a provision that the judicial authority should be considered altogether separate from that of the collector; and that in the former capacity the judge should be wholly independent of the board of revenue; subject only to the authority of the Governor General in Council; and of the judge of the fudder dewanny adawlut. The superintendence of this court was reassumed by the Governor General and Council, on the 15th November 1782, in pursuance of instructions from the Honorable Court of Directors; and by the Statute 21, GEORGE III, Cap. LXX, it was declared, that “Whereas the Governor General and Council, or some
“committee thereof, or appointed thereby, do determine on
“appeals and references from the country or provincial
“courts in civil causes; be it further enacted, that the said
“court shall and lawfully may hold all such pleas and ap-
“peals, in the manner and with such powers as it hitherto
“hath held the same, and shall be deemed in law a court
“of record; and the judgments therein given shall be final
“and conclusive; except upon appeal to His Majesty, in
“civil suits only, the value of which shall be five thousand
“pounds and upwards.”

In the year 1787, in consequence of further instructions from the Court of Directors, it was resolved that, with an exception to the three courts established in the cities of Moorshedabad, Patna, and Dacca, (which were to continue independent of any collectorship for the decision of causes of a civil nature originating within the limits of these cities,) the office of judge of the several mofussil courts, should be held by the person who had, or should hereafter have, the charge of the revenue. A revised code of judicial regulations, adapted to this change of system, and dated the 27th June 1787, was at the same time printed and published, with translations, in ninety one

one articles; the fourteenth of which declared the matters cognizable in the mofuffil adawluts to be, all disputes concerning property, real or personal; all causes of inheritance, marriage or cast; all claims to zemindaries, talookdaries, and other lands; all matters relating to debts, accounts, contracts, partnerships, and duties; and in general all " subjects of litigation, " being of a civil nature, and not concerning the revenues."

But, by the 19th section, these courts were not to entertain " any suit or cause for any matter or thing directly " or indirectly relating to the public revenue; or concerning " any demand of government on zemindars, talookdars, " chowdries, or other landholders, farmers, muttahids, wada- " dars, securities, aumils, tuffildars, etmamdars, or others, em- " ployed in the collections; or, in any wise responsible for the " revenues; or any demands of zemindars, talookdars, chow- " dries, or other landholders, farmers, muttahids, wadadars, " securities, aumils, tuffildars, etmamdars, or other persons " employed in the collections, or their under farmers, malza- " mins, inferior landholders, and collectors, or others, from " whom rents or revenues have been immediately due to them. " Nor any demands for rents or revenues on persons employ- " ed in the collection of them, officially or hereditarily, in the " different gradations downwards, from government to the " ryots, or immediate occupants of the soil; nor again, in the " same manner, of any complaints of ryots and persons, of any " of the abovementioned denominations, against the persons " to whom they pay revenues in the different gradations up- " wards, for irregular or undue exactions."

THE whole of the causes, thus excepted from the jurisdiction of the courts of dewanny adawlut, were made cognizable by the collectors, under a separate code of revenue regulations (passed on the 8th June 1787,) by the first article of which it was provided, " that the several branches of the public duty, " now vested in the collector, shall not be blended in the exe-
" cution ;

Causes relating to the land rents or public revenue, made cognizable by the collectors; under a separate code of regulations; and appealable to the board of revenue and Governor General and Council.

“ cution; but each part shall be discharged by him in the
 “ capacity of collector, judge, or magistrate, according to the
 “ department to which it belongs, and be recorded in the pro-
 “ ceedings of that department only, distinct from others.”
 It was further provided, that the board of revenue should be
 authorized to receive appeals in matters of revenue, from the
 decisions of the collectors; if preferred within one month; and
 an ultimate appeal was allowed from their determination, with-
 in the same period, to the Governor General and Council.

Reasons assign-
 ed for re-inves-
 ting the col-
 lectors with the
 superintendence
 of the civil
 courts;

And objections
 stated against
 the former sys-
 tem.

THE reasons assigned for reinvesting the collectors with the
 superintendence of the courts of mofussil d wanny adawlut,
 (a system which had been discontinued in 1780, “ for the
 “ more regular administration of justice in the country civil
 “ courts of these provinces;”) were “ the greater simplicity,
 “ energy, justice, and œconomy, expected to be the result of
 “ the measure.” The following objections, which candour re-
 quires to be noticed, had also been stated, against the system
 established in 1780 and 1781, by one of the most experienced,
 ablest, and best informed of the Company’s servants*. “ People
 “ accustomed to a despotic authority should look to one master.
 “ It is impossible to draw a line between the revenue and judi-
 “ cial departments in such a manner as to prevent their clashing;
 “ and in this case, either the revenues must suffer, or the
 “ administration of justice must be suspended. The present
 “ regulations define the objects of the two jurisdictions with
 “ clearness and precision; yet they continually clash in prac-
 “ tice: complaints are so blended, that it is often impossible
 “ to determine to which tribunal they belong; and that there
 “ has not been more confusion than has actually happened,

* Sir J. SHORE. In his “ remarks on the mode of administering justice to the natives in
 “ Bengal, and in the collection of the revenues,” which have been already mentioned as deli-
 vered to Sir J. MACPHERSON in January 1782, and recorded by the latter on the Bengal
 revenue consultations of 29th May 1785. It should be added, as appears from Sir J. MAC-
 PHERSON’S minute, recorded at the same time, that these remarks were written for his personal
 information; and were “ not meant for the public eye.”

" is owing to the discretion of those who have been entrusted
 " with the administration of justice. It may be possible, in
 " the course of time, to induce the natives to pay their rents
 " with regularity, and without compulsion, but this is not
 " the case at present. If any force is offered, a complaint is
 " made in a court of justice, and whether true or false, a
 " temporary protection is given to the complainant, who is
 " released from the demands upon him; to realize them af-
 " terwards is no easy matter. In all demands for revenues,
 " or in summonses to cause the attendance of parties at the
 " adawluts, peons are employed, and very often the peons
 " of the two tribunals meet at the house of the same man,
 " where the property of his person is contested, and he is
 " obliged to pay both parties."

BUT, admitting that a system, vesting in the hands of one
 person the powers of judge and magistrate, and the autho-
 rity necessarily entrusted to the officers employed in the
 collection of the public revenue, may be more simple, ener-
 getic, and economical, than a system which divides these
 powers between distinct persons and authorities; it is mani-
 festly too extensive a trust; and if a higher degree of justice
 be rendered, in any instance, by an administration of the
 former system, it must proceed from the personal character
 and qualifications of the individuals employed to administer
 it. These, for a time, might check the natural tendency of
 such an accumulation of power to the abuse of it; but could
 not be relied upon, as a fixed principle, to support any per-
 manent system of justice. Admitting further, what is by no
 means certain, under proper provisions, that the collector,
 armed with the powers of judge and magistrate, might expe-
 rience more facility in enforcing demands of revenue; than
 if there were an independent court of justice upon the spot;
 to which the injured could resort when his demands, or those
 of the native officers acting under him, exceed what is justly
 " due;

Remarks on the
 reasons and ob-
 jections above
 stated.

due; by what means could redress be obtained against injustice in such demands, where the collector himself presides in the only local tribunal? Complaints indeed might have been preferred, whilst this system prevailed, to the board of revenue, or to the Governor General and Council, at the presidency; but the distance of most of the districts from Calcutta, with the delay and loss of time that must always ensue, operated to prevent such recourse, except in cases of serious oppression; and a dread of the various powers united in the collector's person must have been a stronger bar to complaint against him; especially when every estate within his jurisdiction was liable to an annual increase of its assessment, either at his discretion, or upon his information. Add to this the difficulty of ascertaining the truth of any complaint against a collector, when he was the only judicial officer upon the spot; and it must be obvious that if few cases did occur of actual oppression, or injustice, in the exercise of the high powers formerly vested in the collectors of the public revenue, it must be ascribed to their personal merits; which, as before observed, might for a time prevent the ill consequences of a defective system; but could not be urged against the expediency of a more certain and adequate remedy. It might be added, that some cases have occurred to shew the necessity of supplying this defect in the former system of revenue and justice. But it is not necessary that an abuse of authority should actually take place to evince the wisdom of guarding against it. Nor was this the only objection to the union of the functions of judge and magistrate with those of the collector. In the latter capacity his measures and conduct were continually open to inspection. The monthly reports made by him of the state of his collections drew the constant attention of the board of revenue, and of government, to his success, or failure, in realizing the public dues; and commendation, or censure, was the frequent result; whilst, at the same time, his diligence or neglect in the decision of causes,

causes, wherein the government had no immediate interest, was seldom brought into public notice; and when observed, the multiplicity of duties he had to perform might be a real plea of justification for any delay in the administration of justice. Under these circumstances, it was natural and unavoidable, that the collection of the revenue, on which the collector's credit and promotion in the service might depend, should be considered his primary duty; and that his duties as judge and magistrate should be regarded as subordinate. The latter might be expected to give way, or at least to remain suspended, whenever they interfered with the former; and, without supposing that any collector was influenced by his commission on the amount of his revenue collections, it may fairly be inferred, that no collector of an extensive district could have given that constant attention to the administration of civil and criminal justice, and police, which the due performance of these important duties indispensably requires.

A THIRD objection to the system of civil justice, subsisting under the regulations of 1787, applies equally to every system established before that of 1793; and may be considered to have been a principal cause of the clashing of authorities noticed in the foregoing quotation. The exception of all suits relative to the public revenues, as well as all demands of the landholders, and farmers of land, upon their under-renters and tenants, and all complaints of the latter against the former, "for irregular or undue exactions, or for any oppressions whatsoever," from the jurisdiction of the courts of dewanny adawlut; whilst these courts were to have cognizance of all complaints and claims, relative to the property of lands, "or any right, title, claim, demand, interest, or lien, to or in the same, or to the possession thereof;" could not fail of rendering it "often impossible to determine to which tribunal a blended complaint belonged; and the inconveniencies stated

Further observations on the system of civil justice established in 1787; and applicable to every system antecedent to that of 1793.

stated to have been experienced were the natural result. The making all complaints of exaction or oppression, in the collection of the revenue and land rents, exclusively cognizable by the collector of the revenue, must also, in frequent instances, have stopped the course of justice; and, in others, have subjected the collector's judgment, however just, to suspicion of its impartiality, from the known interest he had in realizing the revenue under his charge; and consequently in supporting the landholders and farmers, from whom it was to be received, in the enforcement of their demands upon their under-renters and tenants. The same bias might be suspected in the collector's decision upon cases of exaction, or undue severity, by any native officer employed under him in the public collections; and where there was no other local court, except that of the collector, to grant redress, it may be presumed that the application for it was often repressed by fear or distrust. This reasoning does not apply to the collectors, and their subordinate officers, being employed to adjust disputed accounts of rent between the landholders, farmers, and tenants, subject to appeal from their adjustment to an independent court of justice upon the spot. On the contrary, the greatest convenience to the parties concerned has been found to result from the revenue officers, whose knowledge and situation peculiarly qualify them for such adjustments, being thus usefully employed, as referees, under the established courts of justice; but it is forcibly applicable to the collector's authority as formerly subsisting, exclusive in all cases of rent or revenue demand, arrear, or exaction; and without any efficient superior court of revision or control.

The revenue officers may be usefully employed as referees, under the established courts of justice; to adjust disputed accounts of rent between the landholders and farmers, and their tenants.

Observations of the Marquess Cornwallis on the arrangements proposed by him.

To the remark that "people long accustomed to a despotic authority should only look to one master," without questioning its general truth and propriety, may be fairly opposed the following observations of the MARQUESS CORN-

WALLIS;

WALLIS:—" The proposed arrangements only aim at insu-
 " ring a general obedience to the regulations, which we may
 " institute; and at the same time impose some check upon
 " ourselves against passing such as may ultimately prove
 " detrimental to our own interests, as well as the prosperity of
 " the Country. The natives have been accustomed to des-
 " potic rule from time immemorial, and are well acquainted
 " with the miseries of their own tyrannic administrations.
 " When they have experienced the blessings of good govern-
 " ment, there can be no doubt to which of the two they will
 " give the preference. We may therefore be assured that the
 " happiness of the people, and the prosperity of the country, is
 " the firmest basis on which we can build our political se-
 " curity. When the landholders find themselves in the pos-
 " session of profitable estates; the merchants and manufactu-
 " rers in the enjoyment of a lucrative commerce; and all de-
 " scriptions of people protected in the free exercise of their
 " religion; both the numerous race of the long oppressed
 " Hindoos, and their oppressors the Mahomedans, will equally
 " deprecate the change of a government under which they
 " have acquired, and under which alone they can hope to
 " enjoy, these inestimable advantages."

IMPRESSED by these considerations; by a sense of the radical defects, above stated, in the constitution of the provincial courts of judicature, which subsisted at the commencement of 1793; and by the many and powerful reasons, moral and political, which called for such an administration of justice, as by securing the private rights of every description of persons, should promote the public advantage, and general prosperity of the country; the MARQUESS CORNWALLIS determined to vest the collection of revenue, and administration of justice, in separate officers; to abolish the *mâl adawluts*, or revenue courts; and to withdraw from the collectors of revenue all judicial powers; transferring the cognizance of all causes hitherto

Reasons for vesting the collection of revenue, and administration of justice, in separate officers; for abolishing the revenue courts; and for withdrawing all judicial powers from the collectors.

hitherto tried by the revenue officers to the courts of dewanny adawlut. The preamble to Regulation II, 1793, contains the reasons publicly assigned for this measure, in the following terms:—" All questions between government and the land-
 " holders, respecting the assessment and collection of the pub-
 " lic revenue, and disputed claims between the latter and
 " their ryots, or other persons concerned in the collection
 " of their rents, have hitherto been cognizable in the courts
 " of mál-adawlut or revenue courts. The collectors of the
 " revenue preside in these courts as judges; and an appeal
 " lies from their decisions to the board of revenue, and from
 " the decrees of that board to the Governor General in Coun-
 " cil in the department of revenue. The proprietors can
 " never consider the privileges which have been conferred
 " upon them as secure, whilst the revenue officers are vested
 " with these judicial powers. Exclusive of the objections
 " arising to these courts from their irregular, summary, and
 " often exparte proceedings, and from the collectors being
 " obliged to suspend the exercise of their judicial functions,
 " whenever they interfere with their financial duties; it is
 " obvious that if the regulations for assessing and collecting
 " the public revenue are infringed, the revenue officers them-
 " selves must be the aggressors; and that individuals who
 " have been wronged by them in one capacity, can never
 " hope to obtain redress from them in another. Their finan-
 " cial occupations equally disqualify them for administering
 " the laws between the proprietors of land and their tenants.
 " Other security therefore must be given to landed proper-
 " ty, and to the rights attached to it, before the desired im-
 " provements in agriculture can be expected to be effected.
 " Government must divest itself of the power of infringing,
 " in its executive capacity, the rights and privileges, which,
 " as exercising the legislative authority, it has conferred on
 " the landholders. The revenue officers must be deprived
 " of their judicial power. All financial claims of the pub-
 " lic,

" lic, when disputed under the regulations, must be sub-
 " jected to the cognizance of courts of judicature, superin-
 " tended by judges, who, from their official situations, and
 " the nature of their trusts, shall not only be wholly unin-
 " terested in the result of their decisions, but bound to de-
 " cide impartially between the public and the proprietors of
 " land, and also between the latter and their tenants. The
 " collectors of the revenue must not only be divested of
 " the power of deciding upon their own acts, but rendered
 " amenable for them to the courts of judicature; and collect
 " the public dues, subject to a personal prosecution for every
 " exaction, exceeding the amount which they are authorized
 " to demand on behalf of the public; and for every deviation
 " from the regulations prescribed for the collection of it. No
 " power will then exist in the country, by which the rights
 " vested in the landholders by the regulations can be infrin-
 " ged; or the value of landed property affected. Land must
 " in consequence become the most desirable of all property;
 " and the industry of the people will be directed to those im-
 " provements in agriculture, which are as essential to their
 " own welfare, as to the prosperity of the state." It was ac-
 " cordingly enacted by Section II of the regulation above cited,
 " that from " the 1st May 1793, the courts of mál adawlut, or
 " revenue courts, shall be abolished; and the trial of the suits
 " which were cognizable in those courts, as well as all judicial
 " powers whatsoever heretofore vested in the collectors of the
 " revenue, or in the board of revenue collectively, as a court
 " of appeal, or in any member of that board individually, shall
 " be transferred to the courts of dewanny adawlut."

Section II, Reg-
 ulation II,
 1793, abolish-
 ing courts of
 mál adawlut and
 judicial powers
 of the revenue
 officers.

THE powers with which the revenue officers were at the
 same time invested, for the punctual collection of the public
 dues, will be noticed in a subsequent part of this analysis. It
 is sufficient to quote in this place the following remark from
 the Governor General's public minute on the occasion.

Governor Ge-
 neral's remark
 on the powers
 requisite to en-
 force the col-
 lection of the
 public revenue;
 and the necessi-
 ty of courts of
 justice to pre-
 vent an abuse of
 such powers.

" There

“ There is no class of men which government should watch
 “ with greater jealousy, and over whom the regulations should
 “ have a stricter control, than the officers who are entrusted
 “ with the collection of the public revenue. It is necessary to
 “ arm them with powers to enforce their demands in the first
 “ instance; otherwise individuals, under the pretext of disput-
 “ ting the justness of it, might protract the payment of what is
 “ due from them; and render the collection of the public
 “ revenue either impracticable, or an endless source of trouble
 “ and litigation. But to prevent the abuse of this power,
 “ there should be courts of justice ready to punish oppression,
 “ and exaction; and the people must be satisfied that the
 “ remedy will be certain and effectual; and that it can be
 “ expeditiously obtained.” The wisdom of this principle is con-
 firmed by the sentiments of a celebrated writer on justice and
 polity, already referred to*, who observes, that “ the establish-
 “ ment of courts of justice is particularly necessary to decide
 “ the causes relating to the revenue; that is, all disputes that
 “ may arise between those who are employed in behalf of the
 “ prince and the subjects;” and adds that, “ in all well regula-
 “ ted states, in countries that are really states, and not the do-
 “ minions of a despotic prince, the ordinary tribunals decide
 “ the causes in which the sovereign is concerned, with as
 “ much freedom as those between private persons.” In pur-
 suance of this just practice, and to render the judicial authority,
 in this portion of the British state, effectual, in all cases, for the
 protection of private rights; or to use the terms of the pream-
 ble to Regulation III, 1793, “ to ensure to the people of this
 “ country, as far as is practicable, the uninterrupted enjoy-
 “ ment of the inestimable benefit of good laws duly administer-
 “ ed,” government determined “ to divest itself of the power
 “ of interfering in the administration of the laws and regula-
 “ tions in the first instance; reserving only, as a court of ap-

Confirmed by
 the sentiments
 of a celebrated
 writer on justice
 and polity.

Consequent de-
 terminations of
 Government, as
 stated in the
 preamble to Re-
 gulation III,
 1793.

* VATTTEL, Book I, Chapter XIII.

“ appeal or review, the decision of certain cases in the last resort ;
 “ and to lodge its judicial authority in courts of justice ; the
 “ judges of which should not only be bound by the most so-
 “ lemn oaths to dispense the laws and regulations impartially ;
 “ but be so circumstanced as to have no plea for not discharg-
 “ ing their high and important trust with diligence and up-
 “ rightness.” It was resolved, “ that the authority of the laws
 “ and regulations, so lodged in the courts, shall extend, not
 “ only to all suits between native individuals, but that the offi-
 “ cers of government, employed in the collection of the reve-
 “ nue, the provision of the Company’s investment, and all
 “ other financial concerns of the public, shall be amenable to
 “ the courts, for acts done in their official capacity, in oppo-
 “ sition to the regulations ;” and that government itself, in su-
 perintending these various branches of the resources of the
 state, might be precluded from injuring private property, it
 was further determined “ to submit the claims and interests of
 “ the public, in such matters, to be decided by the courts of
 “ justice, according to the regulations, in the same manner as
 “ suits between individuals.”

It was accordingly declared by Section X, Regulation III,
 1793, (extended to Benares by Section VII, Regulation VII,
 1795, and re-enacted for the ceded provinces by Section VII,
 Regulation II, 1803,) that “ collectors of the revenue and their
 “ assistants and native officers, commercial residents and agents,
 “ and their assistants and native officers employed in the provisi-
 “ on of the investment, salt agents, and their assistants and native
 “ officers, concerned in the manufacture of salt, the collectors of
 “ the customs, and their assistants and native officers, employed
 “ in the collection of the customs, the mint and assay masters,
 “ and their assistants and native officers, are amenable to the
 “ zillah or city court, in the jurisdiction of which they may
 “ reside, or carry on the public business committed to their
 “ charge, for any acts done in their official capacity, in oppo-
 sition

Section X, Re-
 gulation III,
 1793, declaring
 certain public
 officers, Euro-
 pean and na-
 tives, amenable
 to the civil
 courts, for acts
 done in their
 official capaci-
 ties, in opposi-
 tion to the re-
 gulations.

Further provision by Section XI, Regulation III, 1793, for a redress of grievances, under the regulations, by acts done in pursuance of special orders from the Governor General in Council, or from the boards of revenue and trade.

“ fition to any regulation printed and published in the manner
 “ directed in Regulation XLI, 1793.” It was further prescribed by Section XI, Regulation III, 1793, (extended to Benares by Section VII, Regulation VII, 1795, and re-enacted for the ceded provinces by Section XV, Regulation II, 1803,) that
 “ if a native, or any other person not being a British subject,
 “ shall consider himself aggrieved, under any regulation printed and published in the manner directed in Regulation
 “ XLI, 1793, by an act done by any of the officers of government described in Section X, pursuant to a special order
 “ originating with the Governor General in Council, or the
 “ board of revenue, or of trade, the officer by whom the act
 “ may be done, is not liable to be sued for it. In such cases,
 “ government is to be considered as the defendant; and the
 “ person deeming himself aggrieved is to present a petition to
 “ the judge of the dewanny adawlut of the zillah, or city, to
 “ which the officer, by whom the act complained of may have
 “ been done, shall be amenable in his public capacity; stating
 “ wherein he considers himself injured under the regulations;
 “ and praying, that the Governor General in Council will
 “ order the court of dewanny adawlut, in which the cause
 “ may be cognizable, to try the points or matters contested,
 “ agreeably to the regulations. The judge, to whom the
 “ petition may be presented, is to forward it immediately to
 “ the Governor General in Council; who, provided he shall
 “ not think it proper to afford the redress that may be solicited by the petitioner, and the courts of justice shall be competent to try the cause, will direct the court, in which it may
 “ be cognizable, to proceed to the trial of it. If the Governor General in Council shall order the cause to be tried, the
 “ court is immediately to send a written notification of the
 “ order to the complainant; and the cause is to be considered
 “ as filed in the court from the date of the notification. The
 “ court is then to proceed to try the suit, under the same rules
 “ and regulations as are prescribed for the trial of suits between individuals.”

PREVIOUSLY

PREVIOUSLY to a specification of these rules, or the principal of them, it will be proper to state what courts have been established for the administration of civil justice, in the first instance, with their respective jurisdictions.

Zillah and city courts established, for administering civil justice, in the first instance.

By Regulation III, 1793, twenty-three zillah, and three city, dewanny adawluts, or courts of civil judicature, were established in the several districts of Bengal, Behar, and Orissa; and in the cities of Dacca, Moorshedabad and Patna. Of this number, two zillah courts, viz. that of the twenty-four pergunnahs, annexed to zillah Hooghly, and that of Cooch Behar, annexed to zillah Rungpore, have been discontinued; but, under Regulations XXXVI, 1795, and VII, 1797, two additional courts have been instituted for the zillahs of Hooghly and Backergunge. Two courts have also been added to the province of Orissa, for the divisions of Cuttac, specified in Regulation IV, 1804. By Regulation VII, 1795, one city, and three zillah courts were established for the province of Benares; of which the Ghazeepore zillah court has been since abolished, and its jurisdiction divided between the other three courts. By Regulation II, 1803, seven zillah courts were established in the provinces ceded by the Nuwab Vizeer. And by Regulation IX, 1804, the territories ceded by the Peshwa, and Doulut Rao Sendheeah*, have been divided into six zillahs; in each of which a civil court is established. These courts are all superintended by an European judge; assisted by a

R. III, 1793.
§ II.

R. XXXVI,
1795. § VII.
R. VII, 1797.
§ II.

R. IV, 1804.
§ II.
R. VII, 1796.
§ II.

R. II, 1803.
§ II.

R. IX, 1804.
§ III, and IV.

Constitution of
these courts.

* The same Asiatic words being sometimes spelt differently in this Analysis, it is necessary to remark, that no correct system of orthography has been attempted; and that the names of persons, places, and things, are in general written according to established practice; especially such as occur in the regulations: where any accentual marks have been used, á, é, í or ee, ó, û or oó, express the long vowels; a or u, e, i, o, oo, the short vowels; aí or y', and aú or ou, the diphthongs composed of the first and third, and first and fifth, vowels; and â the peculiar Arabic letter, âyn, which Sir WILLIAM JONES, (whose system of orthography has been chiefly followed) proposes to note uniformly by a circumflex. It has not however been deemed necessary, in this tract, to adopt his discriminative notation of the consonants; though well calculated for the object intended by him; and for all works, in which a precise discrimination of the original characters is required.

Mahomedan and Hindoo law officer; by a register, who is a covenanted servant of the Company; in some instances by an assistant to the register, being also a covenanted servant; and by an establishment of native ministerial officers. Previously to entering upon the execution of the duties of his office, the judge is required to take and subscribe an oath, of which the form is prescribed in the regulations referred to; and the substance of which has been already stated in the preceding section. By the same regulations the use of an official seal is directed: the courts "are to be held in a large and convenient room, in the city or place at which they are respectively established, three days in every week; or oftener, if the state of the business should render it necessary;" and "no rule, order, proceeding or decree is to be made, but on court days, and in open court."

R. III, 1793.
§ III, V, and VI.

R. II, 1803.
§ XIII, and XIV.

Their local jurisdiction.

R. III, 1793.
§ IV.

R. VII, 1795.
§ IV.

R. II, 1803.
§ III.

What persons amenable to them.

R. III, 1793.
§ VII, and IX.

R. XXVIII, 1793. § II, to VIII.

R. II, 1803.
§ IV, and VI.

R. XVIII, 1803.
§ II, to VIII.

THE local jurisdiction of the several courts extends to all places that are, or may be included, within the limits of the zillahs and cities in which they are respectively established. All natives, as well as Europeans and other persons not British subjects, residing out of Calcutta, are amenable to the jurisdiction of the zillah and city courts; which are further declared to have jurisdiction over all British subjects, excepting King's officers, serving under the presidency of Fort William, and the military officers and covenanted civil servants of the Company, so far as not to allow them to reside, at a greater distance than ten miles from Calcutta, unless they execute a bond, the form of which is prescribed in Regulation XXVIII, 1793; (extended to Benares by Regulation XXIV, 1795, and re-enacted for the ceded provinces by Regulation XVIII, 1803;) to render themselves amenable to the court within whose jurisdiction they may reside, in all suits of a civil nature that may be instituted against them by natives, or persons not British subjects, in which the amount claimed may not exceed five hundred sicca rupees. It is provided by the same

same regulations, that when any British subject, or other person not amenable to the jurisdiction of the zillah and city courts, shall institute a suit against a person amenable thereto, he (the plaintiff) is to execute an instrument, of the nature of an arbitration bond, (the amended form of which is contained in Section II, Regulation XI, 1797,) declaring himself subject to the jurisdiction of the court, for so much as shall relate to the suit in question; and binding himself to abide by the award or decree of the court, in the same manner and to the same extent, as the jurisdiction of the court is valid against the defendant. If the plaintiff refuse to execute such instrument, his plaint is not to be received or filed.

R. XVIII,
1793. § VIII

R. XI, 1797:
§ II.

R. XVIII,
1803. § VII.

THE equity and necessity of the latter of these provisions, respecting British subjects of every description, who may have recourse, as plaintiffs, to the zillah or city courts, for the recovery of their demands upon persons amenable to those courts, are evident. To have the benefit of the local court, in recovering what is justly due to them from the native inhabitants, or others within its jurisdiction, without being themselves bound to observe and fulfil the judgment passed upon their respective claims, would be manifestly inconsistent with the ends of justice. The reasons stated in the preamble to Regulation XXVIII, 1793, (and Regulation XVIII, 1803, for the ceded provinces,) evince also the propriety of rendering British subjects, not in the service of the King or Company, who reside in the interior parts of the country, generally for commercial purposes, amenable as defendants, to the civil court of the jurisdiction in which they reside, in suits for a small amount, that could not be prosecuted, without great inconvenience, and disproportionate expence, in the supreme court at the presidency. Such British subjects
 “ may recover with facility, and at a moderate expence, their
 “ claims upon the native or other inhabitants of the Com-
 “ pany’s territories, who are declared amenable to the courts
 “ of

Equity and ne-
cessity of pro-
visions respec-
ting British sub-
jects.

Preamble to
Regulations
XXVIII, 1793,
and XVIII,
1803.

“ of dewanny adawlut, by instituting a suit against them in
 “ the court of the zillah or city in which they reside; but
 “ the natives of the country, and all other persons subject to
 “ the jurisdiction of the dewanny courts, have no means of
 “ obtaining redress against such British subjects, except by
 “ suing them in the supreme court of judicature at Calcutta.
 “ The manufacturers therefore, as well as the immediate cul-
 “ tivators of the soil, and the lower orders of the people,
 “ with whom such British subjects necessarily have extensive
 “ dealings, are in fact precluded from all redress in the event
 “ of their being wronged; as it is obviously impracticable for
 “ the generality of persons of these descriptions to quit their
 “ families and occupations, and perform a journey, probably
 “ of several hundred miles, to sue for small demands, in a
 “ court proceeding and deciding according to laws, and in a
 “ language, with both of which they are equally unacquaint-
 “ ed, and at an expence that the opulent only can support.”

As the Coffeas, and other mountaineers on the frontier of Sylhet, from whom chunam, and various articles of trade are purchased, could not, from their situation, prosecute claims upon British subjects for sums exceeding five hundred rupees, in the supreme court, at Calcutta, it is further enacted by Section VII, Regulation I, 1799, that “ such British born subjects as may be permitted to reside within the district of Sylhet, (with the above exception of King’s officers, and civil and military servants of the Company) shall, in addition to the form of bond prescribed by Section III, of Regulation XXVIII, 1793, execute a bond of similar tenor, but without the limitation of five hundred rupees, rendering themselves amenable to the jurisdiction of the zillah dewanny adawlut, in all suits for whatever amount or value, that may be instituted against them by any of the inhabitants of the hills on, or contiguous to, the Company’s frontier in Sylhet.”

R. I, 1799,
 § VII.

Exceptions to
 the general rule,

THE only exception, expressly provided by the regula-
 tions,

tions, to the general rule, declaring natives amenable to the civil courts of justice, is contained in Section VIII, of Regulation II, 1803; whereby it is enacted, in conformity with the sixth article of a treaty concluded with the Nuwab of Furruckhabad, on the 4th of June 1802, that "the authority of the court of adawlut shall not extend to the person of the Nuwab; but as his connections and dependants are undefined, and as it is the object of the British Government to introduce a fair and impartial administration of justice, throughout the province of Furruckabad; it is agreed, that whatever complaint may be preferred against any of the Nuwab's dependants, shall, in the first instance, be referred to the Nuwab; and in the event of the complainant not receiving speedy justice, or being dissatisfied with the Nuwab's decision, the complaint shall be decided in the adawlut." It is however understood, that the Nazim of Bengal is also, by his station, personally exempted from the common process of the civil courts; and the following provision has been made in Section X, of Regulation XVI, 1793, for the reference of certain cases to him in the first instance: "In complaints brought before any zillah or city court, in which it shall appear either by the application of the Nazim, or the representation of the defendant, at or before the time of giving in his or her answer, or by the petition of the complainant, that both parties are servants or relations of His Excellency, or the widows or female descendants of the former Nazims of Bengal; the parties are to be referred for justice to the Nazim, or to any person whom he may appoint to dispense it. Upon a complaint being preferred against any servant or servants of His Excellency, by persons of a different description, the court in which the complaint may be instituted, is either to refer it to His Excellency, or to hear it in the ordinary manner, according to its discretion; *taking care at all times, and in all matters, to pay every proper attention to the dignity and long established rights of the Nuwab.* Provided however, that in all cases

declaring natives amenable to the civil courts.
Reg. II, 1803,
§ VIII.

Nuwab of Furruckhabad.

Nazim of Bengal.

Reg. XVI,
1793, § X.

cases in which either the plaintiff or defendant shall prefer the jurisdiction of the courts, to that of the Nazim, the judge is to try and determine the suit, in the same manner as if neither of the parties had been persons of the description specified in this section."

Reg. XV, 1795,
§ III.

Rajah of Benares.

A further provision has been made by Section III, of Regulation XV, 1795, for excepting from judicial cognizance, and referring to the Rajah of Benares, subject to the control of the collector of that province, and ultimately to the decision of the Governor General in Council, complaints relative to undue exactions of revenue, breach of agreement in respect to pottahs (leases), or the resumption of lands exempted from the payment of revenue, in the jageer, ultumgha, and other private lands appertaining to the Rajah, as specified in the section above noticed. But this exception, made in pursuance of an agreement concluded by the resident at Benares with Rajah Maheepnarain, under date the 27th October 1794, does not extend to any other complaints or suits preferred against the Rajah of Benares; although, in common with the principal Mahájuns, or bankers, of the city of Benares, known under the denomination of *Nouputty*, and the *Baboos*, or persons of his blood and family, he is exempted by Section X, of Regulation VIII, 1795, from furnishing the personal security, required from other defendants in civil causes, during the trial of them in the first instance; and the court receiving a claim upon such privileged defendants, is directed to issue, instead of the usual summons, merely a notice to them; containing a short account of the demand, and fixing a day for them to appear and answer the same, either in person, or by an authorized representative.

R. VIII, 1795,
§ X.

What suits are cognizable by the zillah and city courts.

R. III, 1793,
§ VIII.

" THE zillah and city courts respectively are empowered to take cognizance of all suits and complaints, respecting the succession or right, to real or personal property, land-rents,

rents, revenues, debts, accounts, contracts, partnerships, marriage, cast, claims to damages for injuries, and generally of all suits and complaints of a civil nature," in which the defendant may be amenable to their jurisdiction; "provided the landed or other real property to which the suit or complaint may relate, shall be situated, or in all other cases, the cause of action shall have arisen, or the defendant, at the time when the suit may be commenced, shall reside as a fixed inhabitant, within the limits of the zillah, or city, over which their jurisdiction may extend." The town of Calcutta, which is under the immediate jurisdiction of the supreme court, not being comprised in that of any zillah or city court, the above powers do not include the cognizance of any suits for land, or other real property, situated within the limits of Calcutta; nor any personal actions, against the fixed inhabitants of that town, which may not be for arrears of revenue, or may be legally considered exclusively cognizable by the supreme court*. The special or limited jurisdiction of the zillah and city courts, in particular cases, provided for by the regulations, will be hereafter noticed: but it may be remarked in this place, that when a landed estate is situated in two, or more, zillah or city jurisdictions, it has been held by the sudder dewanny adawlut to be consistent with the spirit

R. II, 1808,
§ V.

Exception,
with respect to
the town of
Calcutta.

R. III, 1793;
§ XVII.

R. II, 1808,
§ XII.

Claims to estates, in two or more jurisdictions, by what court to be tried.

* Under Section XVII, Regulation III, 1793, the dewanny adawlut of the zillah of the twenty-four pergunnahs was authorized to entertain suits, "concerning marriage or casts, in which no money or other valuable thing may be demanded, although the cause of action shall have arisen, or the defendant may reside, within the limits of the town of Calcutta." But the zillah court of the twenty-four pergunnahs having been discontinued, it may be questioned whether this power is now vested in the judge of zillah Hooghly; and the exercise of it does not appear requisite, as the supreme court has jurisdiction in all cases of marriage and cast. By Section VIII, 21 GEORGE III, Cap. 70, it is enacted, that the "supreme court shall not have, or exercise, any jurisdiction, in any matter concerning the revenue, or concerning any act or acts, ordered or done in the collection thereof, according to the usage and practice of the country, or the regulations of the Governor General and Council." But by Section XVII, of the same Statute, the authority of that court is reserved, as before, in "all manner of actions and suits against all and singular the inhabitants of Calcutta." It has therefore been directed by government, (on a reference from the sudder dewanny adawlut in November 1797) that whenever it may be necessary to apprehend a revenue defaulter, resident in Calcutta, application for that purpose be made, through the board of revenue, to the Governor General in Council, who, if it appear to him proper, will order the attachment of the defaulter's person by the revenue officers,

and

and meaning of the regulations, as well as conducive to justice, that a claim to the entire estate should be received, and tried, by the court of the jurisdiction in which the greater part of the estate may be situated*; unless it be deemed proper, in any such case, by the Governor General in Council, or by the sudder dewanny adawlut, to direct the suit to be tried and determined, in the first instance, by the provincial court of appeal, in conformity with Section VI, Regulation V, 1793.

Civil courts prohibited from interference in criminal cases. Except for contempt, and perjury.

R. III, 1793, § XVIII.

R. IV, 1793, § XIV, and XXI.

R. II, 1803, § XI.

R. III, 1803, § VIII, and XXII.

This restriction not meant to prohibit a civil action for damages in cases of personal injury.

THE civil courts are “prohibited from interfering, in any “respect, in any cause or matter of a criminal nature, declared cognizable by the magistrates,” and criminal courts; except for contempt, and perjury, committed in open court; the former of which, as well as any undue arrogation, or illegal exertion, of judicial authority, they are authorized to punish, by a fine not exceeding two hundred rupees; and in cases of wilful and corrupt perjury, in any cause or matter depending in court, the judge is immediately to commit the offender to close custody to take his trial before the court of circuit. This restriction against the interference of the civil courts, in cases declared cognizable by the criminal courts, being obviously intended only to prevent the former, whose province is the reparation of private injuries, from exercising the powers vested in the latter, for the ends of public justice; it must not be understood to prohibit a civil action for damages in cases of personal injury, as allowed by the laws of England, instead of, or in addition to, a criminal prosecution. On the contrary, the criminal courts, which under Section XXII, Regulation IX, 1793, might have directed a pecuniary compensation to be made to the party injured, having been

* On the 15th March 1798, the court of sudder dewanny adawlut directed that the claim of RANEE BISHUNKOONWUR, to lands situated partly in zillah Burdwan, and partly in zillah Hooghly, should be tried by the judge of the former district. In another case; wherein the disputed lands were on the boundaries of two zillahs, in the Dacca division; the provincial court of that division were ordered to try the suit, in the first instance.

expressly

expressly forbidden, by Regulation XIV, 1797, to adjudge pecuniary compensations, or damages, (the reimbursement of costs excepted) in any criminal prosecution; it is indispensably necessary, for maintaining the settled principle of law, "that every right when withheld must have a remedy, and every injury its proper redress*," to consider the power vested in the civil courts, of receiving all suits for "claims to damages for injuries," as extending, not only to every injury of property; but also to every personal injury; whether by actual bodily hurt or insult, by unlawful imprisonment, or by malicious defamation, affecting character, cast, or livelihood. By Section VII, Regulation II, 1805, however, "all suits and complaints for penal damages are required to be preferred to the proper courts of justice, within one year after the cause of action shall have arisen; or as soon afterwards as it may be in the power of the party aggrieved to prefer the same." And with regard to all actions of this description which are merely personal, arising *ex delicto*, for wrongs committed by the defendant, and not involving any claim to property, or compensation for the loss of it, the English rule of law is applicable, that *actio personalis moritur cum persona* †.

R. II, 1805.
§ VII.

THE zillah and city courts are also "prohibited from entertaining any cause, which from the production of a former decree, or the records of the court, shall appear to have been heard and determined by any former judge, or any superintendent of a court having competent jurisdiction. If any doubt arise, respecting the competency of the former jurif-

Restricted also from entertaining a cause heard and determined by a competent court.
R. III, 1793.
§ XVI.
R. VII, 1795.
§ X.
R. II, 1805.
§ X.

* Vide BLACKSTONE, Book III, Cap. 7: wherein the maxim quoted, is stated to be "A settled and invariable principle in the laws of England." It may be said that the proper redress for criminal injuries is inflicted by the criminal courts. But punishment of the offender, however proper to deter him, or others, from committing the like offence, is no retribution to the party injured; and it might perhaps be expedient to reinvest the criminal courts with a qualified power of adjudging such reparation in certain cases; as well to overcome the general reluctance to prosecute in those courts; as to obviate the necessity of a second prosecution, for damages, in the civil courts.

† BLACKSTONE, Vol. III, page 302.

diction,

diction, the judges are to report the circumstances to the sadder dewanny adawlat and wait the instructions of that court*." And after "a suit shall have been instituted in the court of any zillah or city, in which it may have been cognizable, no other zillah or city court is to entertain a suit for the same cause of action; but on proof of the institution of a prior suit, in another competent court, for the same cause of action, the court in which the second suit may be brought is to dismiss it with costs. The judge is further empowered to impose a fine in such cases, as well as in all cases wherein the suit may appear to him frivolous, vexatious, or groundless; "in such amount as he may think proper, upon a consideration of the nature of the case, and the situation, and circumstances in life, of the offender."

R. III, 1793.
§ XII.
R. II, 1803.
§ IX.

Or a second suit, after the institution of a prior suit in another court.

A fine, besides costs, may be imposed in such cases, as in all vexatious or groundless complaints.

Intention of preceding rules.

THE salutary intention of these rules is, obviously, to check litigiousness; secure the right and possession of property held under judicial decisions; and guard against a perversion of the public courts of judicature, from the just and benevolent ends of their institution, to become the instruments of private enmity, persecution and oppression. In applying them therefore, this intention should be strictly attended to; and error, or ignorance, should not be blended with deliberate fraud, or malice: nor can the restriction against rehearing a cause, already heard and determined, be considered applicable to any suit dismissed, in the first instance, for some neglect or default only; without an investigation of, and decision upon, the merits of the case. Sufficient provision has

* On the 3d August 1795, the courts of sadder dewanny adawlat, in answer to a reference from the judge of Chittagong, whether an application to the committee of revenue, in a case of landed property, was to be considered as made to a court of competent jurisdiction, within the meaning of Section XVI, Regulation III, 1793; declared their opinion that it was not; both as the court were not informed of any powers vested in the committee of revenue, to take cognizance of such cases, since the institution of courts of dewanny adawlat in 1772; and as these courts, from the time of their institution, have been the regular constituted authorities, for the receipt, investigation, and decision, of all claims of this description.

indeed

indeed been made by the regulations, to prevent or remedy an injurious misapplication of them in this respect; as well as to authorize a revision of erroneous judgments, in causes not appealable, upon sufficient grounds being stated to the satisfaction of the sudder dewanny adawlut; as will be subsequently more fully specified.

By Section XIV, Regulation III, 1793, the zillah and city courts of Bengal, Behar, and Orissa, were prohibited from "hearing, trying or determining the merits of any suit whatever, against any person or persons, if the cause of action shall have arisen previous to the 12th August 1765;" (the date of the dewanny grant to the Company for the above provinces;) "or any suit whatever, against any person or persons, if the cause of action shall have arisen twelve years before any suit shall have been commenced on account of it; unless the complainant can shew, by clear and positive proof, that he had demanded the money, or matter in question, and that the defendant had admitted the truth of the demand, or promised to pay the money," (within the last twelve years, so as to constitute a new ground of action within the limited period;) "or that he directly preferred his claim within that period," (vizt. within twelve years after the origin of the cause of action,) "for the matters in dispute, to a court of competent jurisdiction, to try the demand; and shall assign satisfactory reasons to the court why he did not proceed in the suit; or shall prove that either from minority, or other good and sufficient cause, he had been precluded from obtaining redress." Similar prohibitions were extended, by Section VIII, Regulation VII, 1795; to the province of Benares, with a substitution of the 1st July 1775, (the date of the actual cession of that province to the Company, under the treaty with the Nuwab Vizeer, of the 21st May preceding;) and with an exception of claims founded on bonds, which may have been in a course of payment

Limitations of time for the cognizance of actions in the zillah and city courts.

R. III, 1793,
§ XIV.
Bengal, Behar,
and Orissa.

Preamble to
Reg. II, 1805.

R. VII, 1795,
§ VIII.
Benares.

payment by instalments; or of which any proportion may have been paid within twelve years previous to the institution of the suit. Also of all claims on mortgages; the period for rendering which unactionable was left to be determined "by the law of the religion of the defendant." The claims of village zemindars, for restoration to their zemindarries, of which they were dispossessed by the Rajahs BULWUNT SING and CHYT SING, before the year 1775; and whose lands, in many instances, were farmed out at the period of making the decennial settlement of Benares (1789), in consequence of Rajah MAHEEPNARAIN's declining, at that time, to restore them, though he subsequently acquiesced in the measure as specified in the fifth clause of Section III, Regulation I, 1795; are likewise virtually excepted by the provision in that clause, from the general limitation of 1st July 1775. By the first and second clauses of Section XVIII, Regulation II, 1803, the courts of adawlut, in the provinces ceded by the Nuwab Vizeer on the 10th November 1801, "are prohibited from "hearing, trying, or determining, the merits of any civil suit "whatever, if the cause of action shall have arisen at a period, being twelve years, antecedent to the date on which "the petition for the institution of such suit shall be presented to the court;" and the powers vested in them, under this limitation, to receive and try suits in which the cause of action may have originated prior to the 10th day of November 1801, are declared to be restricted to "suits of a "private nature, between individuals; of which cognizance "would have been taken by the courts, officers, or authorities, established for the administration of justice under the "government of the Nuwab Vizier." By the third clause of the same section, after twelve years shall have elapsed from the date of the cession of these provinces, the general limitation of twelve years, with the exceptions before cited from Section XIV, Regulation III, 1793, is extended to them; under a provision, to take effect from the same period, (viz. the

R. I, 1795,
§ III.
Preamble to
Reg. II, 1803.

R. II, 1803,
§ XVIII.
Ceded provinces.

the 10th November 1813;) “ that it shall not be competent
 “ to the zillah courts, under the powers vested in them by
 “ this clause, to hear, try, or determine, the merits of any
 “ civil suit whatever, if the cause of action shall have arisen
 “ previous to the 10th day of November 1801.”

THE period of twelve years, adopted in all the regulations
 abovementioned, appears to have been established, when the
 administration of civil justice was first committed to the ser-
 vants of the Company, on the institution of courts of de-
 wanny adawlut in 1772; and in the plan, then proposed by
 the committee of circuit, it is remarked, that “ by the Ma-
 “ homedan law all claims which have lain dormant for twelve
 “ years, whether for land or money, are invalid. This also
 “ is the law of the Hindoos; and legal practice of the coun-
 “ try.” This observation does not appear to be correct with
 respect to the Hindoo and Mahomedan laws; though it may
 have been, with regard to the legal practice of the country;
 and whether previously established, or not, the rule having
 now been so long in force, it would be improper to abrogate
 it. But the declared grounds on which this limitation was in-
 troduced, viz. “ the litigiousness and perseverance of the na-
 “ tives of this country, in their suits and complaints, often
 “ productive not only of inconvenience and vexation to their
 “ adversaries, but also of endless expence and actual oppres-
 “ sions”, are not applicable to suits for the recovery of
 public rights and dues, instituted on the part of Govern-
 ment, under the provisions made by the Regulations for sub-
 jecting the public claims and interests to the cognizance and
 decision of the established courts of justice. For such suits
 and claims, the unlimited time, heretofore allowed by the
 laws of England, (as by those of the Hindoos) has been latterly
 restricted to a period of sixty years; * being the largest period

Preamble to
 Regulation II,
 1805.
 Explanation of
 limit of twelve
 years.

Not applicable
 to public suits,
 instituted on the
 part of Govern-
 ment.

* By the Statute IX, Geo. III, Cap. 16. Vide BLACKSTONE, Vol. III, P. 307.

fixed

Period of 60 years allowed by the Hindoo law to establish a right of property in cases of unmolested possession, without proof of a bad title.

Distinction between *bonâ fide* and *malâ fide* possession.

Explanatory and additional provisions made by Regulation II, 1805.

Section II.

fixed for the judicial cognizance of the claims of individuals in particular cases. This period is recognized by the provisions of the Hindoo Law in regard to individuals; and is not incompatible with those of the Mahomedan law. Under the former it is applied to private rights and claims, in cases of unmolested possession, without proof of a bad title. And the distinction between *bonâ fide* possession, under a title believed good and sufficient, and *malâ fide* possession, obtained by fraud or violence, and therefore known to be insufficient, has been taken in the Hindoo Law, as in the laws of all countries, wherein the long and peaceable possession of things capable of becoming private property, under a just title, believed by the possessor to have vested in him a full right of property, is held and admitted to have established such right of possession and property; or at least to bar any legal claim against the possessor. On consideration therefore of the several circumstances stated, (as set forth in the preamble to Regulation II, 1805), and with a view to provide more effectually for securing the rights of the public, and of individuals, in the several cases recited, the following explanatory, and additional, rules have been recently enacted by His Excellency the Most Noble the Governor General in Council.

“ THE limitation of twelve years for the commencement of civil suits, under certain provisions and exceptions, which, in pursuance of former rules and practice, has been continued and prescribed by Section XIV, Regulation III, 1793: Section VIII, Regulation VII, 1795; and Section XVIII, Regulation II, 1803; shall not be considered applicable to any suits for the recovery of the public revenue, or for any public right or claim whatever, which may be instituted by, or in behalf of, Government, with the sanction of the Governor General in Council, or by direction of any public officer or officers, who may be duly authorized to prosecute the same on the part of Government. All claims

on

on the part of Government, whether for the assessment of land held exempt from the public revenue without legal and sufficient title to such exemption, or for the recovery of arrears of the public assessment, or for any other public right whatever, (the judicial cognizance of which may not have been otherwise limited by some special rule or provision in force) shall be heard, tried, and determined in the several courts of civil justice, to which the cognizance thereof may properly belong, under the general regulations which have been or may be hereafter enacted, if the same be regularly and duly preferred at any time within the period of sixty years from and after the origin of the cause of action: provided that such cause of action shall not have originated, within the provinces of Bengal, Behar, and Orissa, before the 12th August A. C. 1765; or within the province of Benares, before the 1st July A. C. 1775; or within the provinces ceded by the Nawaub Vizier before the 10th November A. C. 1801; being the periods of the Company's accession to the civil government of the above provinces respectively."

"THE limitation of twelve years fixed by Section XIV, Regulation III, 1793, Section VIII, Regulation VII, 1795, and Section XVIII, Regulation II, 1803, shall also not be considered applicable to any private claims of right to lands, houses, or other permanent, immovable property; if the person or persons in possession of such property, when the claim of right thereto may be preferred in a competent court of judicature, shall have acquired possession thereof by violence, fraud, or by any other unjust, dishonest means whatever; or if such property shall have been so acquired by any other person or persons from whom the actual occupant or occupants may have derived his or their title, and shall not have been subsequently held under a just and honest title (such as inheritance, purchase, fair donation, or any other fair title, believed to have conveyed a right of possession and property) during

Section III.

Clause first.

a period of twelve years, antecedent to the time of preferring a claim of right thereto in a competent court: provided that such violent, fraudulent, unjust, or dishonest acquisition be established to the satisfaction of the court in which the claim may be preferred; or, if the suit be appealable, to the satisfaction of the proper court of appeal."

Clause second.

" IN all such cases, viz when the original cause of action may have arisen more than twelve years before the institution of the suit, and the claim may not be cognizable under the exceptions and provisions contained in the regulations and sections above cited; but may be nevertheless cognizable under the provision made by the preceding clause, from the defendant's having acquired possession of the claimed property by violence, fraud, or other unjust and dishonest means, or from the property, after being so acquired by any other person, not having been subsequently held by the present occupant, and his predecessors, under a just and honest title, during the prescribed period of twelve years; the plaintiff shall set forth the same distinctly, either in his petition of plaint, or in his replication. The court, after taking the answer and rejoinder of the defendant, shall, if the alleged unjust and dishonest acquisition be denied by the defendant, examine any evidence that may be adduced by the plaintiff in proof of his allegation; as well as any evidence that may be brought by the defendant to prove his just and honest acquisition of the property claimed; or the just and honest possession thereof by himself and his predecessors, during more than twelve years; after which, the court shall determine whether the suit in question be cognizable under the present rule, or otherwise; and if such determination be in favor of the plaintiff; or in appealed cases, if a determination for the cognizance of the suit be passed by the court of appeal; the merits of the plaintiff's claim of right shall be heard, tried, and determined, notwithstanding the lapse of time, in like manner as

as if the claim had been regularly preferred within twelve years after the origin of the cause of action."

Clause third.

" PROVIDED, that nothing in the preceding clause, or in any part of the existing regulations, shall be held to authorize the cognizance of any suit whatever, in any court of justice, if the cause of action shall have arisen sixty years before the institution of such suit. Nor shall any plea on the part of the plaintiff, for the nonprosecution of his claim of right during a period of sixty years, after the origin of his alleged cause of action, nor any original defect of title on the part of the possessor of the property claimed, after the elapse of such period, be deemed a sufficient ground for taking judicial cognizance of any suit so preferred. Moreover, although the property claimed may have been acquired by an insufficient title within the period of sixty years, hereby fixed as the utmost limit for the cognizance of any claims in the established courts of justice; if the property so acquired shall have descended by inheritance to the person in possession when the claim thereto may be preferred, after an elapse of twelve years; or if such person shall have obtained just and honest possession thereof by purchase, fair donation, or by any other title believed to be just and valid, and not appearing to be in any respect collusive, for the purpose of depriving the plaintiff of his right; and either such occupant himself, or any other person in his behalf, or from whom the property may have been obtained under any of the titles aforesaid, or the whole in succession, shall have held quiet and unmolested possession, under a title believed to be just and valid, during a period of twelve years antecedent to the time of a claim thereto being preferred in a competent court; the provisions made by the foregoing clauses shall not be considered applicable to any private claims to property so circumstanced; which are therefore to be deemed inadmissible, as heretofore, after twelve years from the origin of the cause of

of action, unless the same be cognizable under the exceptions and provisions already in force."

Clause fourth.

" PROVIDED further, that no length of time shall be considered to establish a prescriptive right of property, or to bar the cognizance of a suit for the recovery of property, in cases of mortgage, or deposit, wherein the occupant of the land or other property may have acquired, or held, possession thereof as mortgagee, or depositary only, without any proprietary right; nor in any other case whatever wherein the possession of the actual occupant, or of those from whom his occupancy may have been derived, shall not have been under a title *bonâ fide* believed to have conveyed a right of property to the possessor."

Limitation of time in summary cases.

And for the recovery of penal damages, fines, and penalties.

THE further provisions contained in the same regulation, whereby a limitation of time is fixed for the delivery of applications to the courts of justice, to obtain the summary inquiry and process authorized in cases of arrears of rent; and of forcible dispossession from land, crops, or other property; will be hereafter noticed, with the special rules and process to which such provisions refer. It has been already observed that all complaints for penal damages, (defined to comprehend all suits for pecuniary penalties demandable by individuals, on account of any act or omission, in opposition to the laws and regulations, exclusive of a compensation for actual losses;) for the recovery of which by judicial process no specific period may have been fixed; are required to be preferred within one year. The same period is fixed for preferring " all suits, complaints, and informations, cognizable by the civil courts, for the recovery of any fine, or penalty, receivable by government, or by the informer, on account of the unlicensed manufacture or sale of intoxicating liquors or drugs; the illicit manufacture or sale of salt or opium; the fraudulent evasion of the stamp duties prescribed by the regulations; or on account

count of any other fines, or penalties, recoverable, either by a regular suit, or by summary process, in the courts of dewanny adawlut, under any regulation in force, which may not have fixed a specific period for the recovery thereof." And no such suit is to be admitted after the prescribed time, unless prosecuted on the part of government, and sufficient cause be assigned why it was not brought forward within one year after the commission of the act upon which the fine or penalty is demandable.

IN stating concisely the principal rules enacted, " for receiving
 " trying, and deciding, suits or complaints " declared cognizable in the zillah and city courts, it is necessary to premise, that these relate to the general course of proceeding in regular suits, for which a summary or other special process has not been prescribed. It may also be previously remarked that the judges of the zillah and city courts, in common with the provincial courts and sudder dewanny adawlut, are " prohibited
 " corresponding by letter with parties in suits, process, or matters, depending before them; or coming within their cognizance. If a party in a suit, or any person amenable to the
 " jurisdiction of the court, shall have any matter to represent to
 " the court; he is either to appear in the court in person and
 " represent the matter in writing, or make the representation in
 " writing through an authorized vakeel (pleader). The court
 " is to pass whatever order, upon the representation, may appear to it proper, consistently with the regulations; and to
 " direct a copy of the order to be delivered to the person making the representation, or to his vakeel, under the seal of the
 " court, and attested by the register." It is further provided, for all the civil courts, that in cases within their jurisdiction, for which no specific rule may exist, they " are to act according to
 " justice, equity, and good conscience."

Rules for receiving, trying, and deciding, suits cognizable in the zillah and city courts.

Chiefly applicable to regular suits.

R. III, 1793.
§ XIX.

R. II, 1803.
§ XX.

Prohibition of correspondence with parties.

Representations to the court, in what manner to be made.

Court to pass an order and deliver a copy of it.

R. III, 1793.
§ XXI, R. II, 1803. § XVII.

General provision, where no specific rule exists.

THE first rule for receiving suits in the zillah and city courts is,

R. IV, 1793.
§ II, extended.

to Benares by
R. VIII, 1795.

Rule for receiving
plaint and
pleadings.

Whether any
vivâ voce argu-
ment, or motion
be allowable.

R. IV, 1793,
§ III.

R. III, 1803,
§ III.

What the plaint
is to contain.

is, that “ no complaint be received, but from the plaintiff;
“ nor any answer to a complaint, but from the defendant; or
“ their respective vakeels duly empowered. Nor is any per-
“ son to be permitted to do any act, or to be heard, *vivâ voce*,
“ in any stage of a cause, excepting the plaintiff or defendant,
“ or their vakeels or witnesses.” The regulations for the ap-
pointment and control of vakeels, or native pleaders, in the
civil courts, will be subsequently mentioned. And it will be
sufficient to remark on the rule cited, (which is common to all
the civil courts), that the terms of it should remove a doubt
entertained, whether any *vivâ voce* argument, or motion, be
allowable; although it is equally clear, from Section XIX, Re-
gulation III, 1793, already quoted, and Section V, Regulation
IV, 1793, hereafter noticed, that all regular pleadings in de-
pending causes, as well as generally all representations to the
court for orders, are required to be in writing.

It is next directed, that “ every complaint, which may
“ be presented to the court, shall state precisely the matter or
“ complaint;” and that, if for land, it shall specify the estima-
ted amount of its annual produce, viz. the sum payable by the
under-tenants on account of the year in which the claim may
be preferred; or, as more accurately defined in Section VIII,
Regulation I, 1801; “ the neat annual rent or other neat pro-
duce receivable by the proprietor, after deducting from the gross
rent, or other gross produce, the actual expence of collection,
and other usual charges of management;” or if the plaint be
for a house, or other real property, not being land, either
malgoozary (paying revenue to Government) or lakheraj
(exempted from the public revenue;) or for any other de-
scription of property; or relating to marriage or cast; or for
damages on account of any injury; it is to state, “ according
“ to the nearest estimate, the exact sum of money; or the
“ amount in which the plaintiff may be endamaged.” It is
also to specify the name of the person complained against;
and

and the time when the cause of action arose. It may be written, in common with all other pleadings, in the Persian, Hindoostanee, or Bengal language, at the option of the parties, in the provinces of Bengal and Orissa; and in the Persian, or Hindoostanee language, in Bahar, Benares, and the ceded provinces. But every plaint is to be signed by the complainant, or his authorized vakeel; and is to be signed, numbered, and dated, in the order in which it may be received, by the judge; as well as registered in a book, to be kept for this purpose by a native officer of the court.

And in what language to be written.

To be signed, numbered, dated, and registered.

UPON a complaint being preferred, conformably with the preceding rules, to the proper zillah or city court, on account of any matter cognizable by it; and upon tender of the institution fee, with security for the pleader's fee if a vakeel be employed; (or proof of inability, as more fully stated in the sequel); the court is to issue a summons on the defendant*, containing a short account of the demand, and requiring the defendant to accompany the officer deputed to serve the summons, or to deliver to him good and sufficient security to appear in person, or by vakeel, and answer to the complaint on a day appointed. The form of the security bond, to be executed by the sureties for the appearance of defendants, is prescribed in Section III, Regulation XI, 1797; (re-enacted for the ceded provinces by Section XXIX, Regulation III, 1803); and for the relief of defendants, in cases of undue or exaggerated demands, by Section II, Regulation III, 1802, (corresponding with Section VIII, Regulation XIV, 1803, for the

R. IV, 1793.
§ V.
R. III, 1803.
§ V.

Summons to be issued on defendants.

Security to be required from defendants.

R. XI, 1797.
§ III.
R. III, 1803.
§ XXIX.

R. III, 1802.
§ II.
R. XIV, 1803.
§ VIII.

* Or defendants, provided they have a joint interest in the matter at issue in the cause; or are jointly answerable for the plaintiff's claim. But it has been ruled by the court of sudder dewanny adawlut, in more than one instance, that a suit against several defendants, who were not jointly bound to the plaintiff, nor had any joint interest in the cause, should not have been received and tried, as a collective suit; and may be dismissed, as irregularly instituted, leaving the plaintiff to prefer a separate claim against each person, not jointly concerned with others. The plaintiff however may be allowed to rectify his plaint, when erroneously preferred, in such cases, if it has not been proceeded upon; and it is the duty of the judge to reject, in the first instance, any complaint which may not be preferred in conformity with the regulations.

ceded provinces), the judge is authorized to fix the extent of the security to be required for the appearance of the defendant, in the first instance ; with directions, whatever may be the claim of the plaintiff, to demand from the defendant such security only as may appear necessary to secure his appearance during the trial of the suit. But if, at any time in the course of the trial, the security so taken shall appear to the judge insufficient, he is authorized, and required, to take such further security as he may think necessary, to secure the defendant's appearance until a final judgment be passed on the case.

R. IV, 1793,
§ V.

R. III, 1803,
§ V.

Defendants receiving the summons, and not giving the security required, how to be proceeded against.

R. IV, 1793,
§ XI.

R. III, 1803,
§ XIII.

Process against defendants upon whom the summons cannot be served.

In what cases the suit may be tried *ex parte*.

THE summons on the defendant is to be served upon him by the nazir of the court, or his inferior officer, who, in the event of the defendant's being found, and his not giving the required security, is to take his person into custody, and bring him before the court ; which is empowered to commit him to close custody until he shall have given the requisite security, or performed the decree which may be passed upon the complaint against him. If a defendant, against whom a summons may issue, shall abscond, or is not after diligent search to be found, or shut himself up in any house or building, or retire to any place, so that the process cannot be served upon him, the judge, on receiving the nazir's return to this effect, is to issue a proclamation, in the country languages, containing a copy of the summons, and a notice, that if the party shall not appear on a day to be fixed (not less than fifteen days from the time of publication) the court will proceed to try and determine the cause without the appearance or answer of the defendant. This proclamation is to be fixed up in some conspicuous part of the court-room, as well as on the outer door of the defendant's usual dwelling house, or in some public situation at his usual place of residence ; and “ if the defendant, “ shall not appear at the time limited in the notice ; or if a “ defendant who may have been served with a summons shall “ not appear ; or if, having appeared, he shall refuse to make “ answer,

“ answer, or make other default, or admit the truth of the
 “ plaintiff’s bill of complaint; the court, on examining the al-
 “ legations of the plaintiff only, and the depositions of his
 “ witnesses, is to decree and give judgment, in the same man-
 “ ner as if the defendant had appeared, answered, and entered
 “ into proof.”

THE foregoing process is not applicable however to any
 “ case, in which the defendant shall be a Hindu or Mahome-
 “ dan woman, of a rank or quality which, according to the
 “ customs and usages of the country, would render it impro-
 “ per to compel her to appear in an open court of justice.”
 In all such cases the judges are not to issue any compulsory
 process; but a summons is to be directed to the nazir of the
 court; containing a short account of the demand, with a no-
 tice that if the defendant shall not appear in person, or by
 vakeel, at the time specified, or having so appeared shall not
 answer the complaint, or make other default, the court will
 proceed to try and determine the cause, as if she had appear-
 ed and answered; and commanding him to deliver a copy of
 it to the dewan or some principal servant of the defendant.
 The nazir is to return the summons, on the day appointed for
 the appearance of the defendant, with an endorsement speci-
 fying in what manner he has executed it, or the reason why
 it has not been executed. If the dewan, or other principal
 servant of the defendant, shall abscond, or otherwise act so
 that the summons cannot be served upon him, or shall not after
 diligent search be found, the judge, upon proof on oath of the
 fact, is to proceed against the defendant by proclamation, in
 the same manner, and under the same penalty for non-appear-
 ance, or default, as directed against other defendants, upon
 whom the summons cannot be served. Another description
 of privileged defendants, upon whom a notice is to be served,
 instead of a summons, under Section X, Regulation VIII 1795,
 for the province of Benares, has been already mentioned. It
 may

Summons and
 other process,
 how to be issued
 when the defen-
 dant is a woman
 of rank, who
 cannot appear in
 open court.

R. IV, 1793.
 § XIII.
 R. III, 1803.
 § XV.

Remark on o-
 ther descrip-
 tions of privi-
 leged defen-
 dants..
 R. XXIX,
 1793, § XX;
 &c.

R. XXXI,
1793, § X.
R. IV, 1798,
§ III, &c.
R. XXXVIII,
1803, § X.

may further be remarked, in this place, that special rules have been enacted for the service of process on persons employed in the manufacture of salt, or as officers in the salt department, or in the provision of the Company's investment; as well as in other special cases, which will be noticed, for greater perspicuity, with the parts of the regulations which have immediate reference to such cases.

R. IV, 1793,
§ V.
R. III, 1803,
§ V.
On defendant's
appearance, a
day to be fixed
for his answer.
R. IV, 1793,
§ IV.
R. III, 1803,
§ IV.

If the defendant appear, either in person, or by vakeel, the court is to fix a day for the delivery of his answer to the complaint; and if it appear reasonable, may afterwards allow a further period for this purpose. That no doubt may be entertained, whether the cause of action, in suits decided by the zillah and city courts, be such as to render them appealable to the superior courts of appeal, the defendant, if he have any objections to the plaintiff's statement of the cause of action, is required to insert them in his answer; and the judge is thereupon to make such inquiries, as he may deem necessary, to ascertain whether the cause of action be such as to render the cause appealable or otherwise. If the defendant's answer offer no objections on this point, the plaintiff's statement of the cause of action is to be held correct, so far as to determine eventually whether the suit be, or be not, appealable, according to the prescribed limitations.

Any objections
to plaintiff's
statement of the
cause of action
to be inserted in
the answer.
And judge to
make any ne-
cessary inquiry
thereupon.

R. IV, 1793,
§ V.
R. III, 1803,
§ V.

Reply, when to
be delivered;
and what to con-
tain.

When the defendant shall have delivered his answer to the complaint, the plaintiff is to reply to it on the next court day. He is not to introduce in his reply any matter not contained in his complaint; but is either to acknowledge the answer of the defendant to be true; or simply and shortly deny the truth of such of the facts stated in it as he intends to dispute; or of all the facts therein stated; or the competency of the answer. The defendant, whose rejoinder is to be delivered on the same day with the reply, (or, as usually allowed, on the succeeding court day,) is in like manner restricted from introducing

Rejoinder.

ducing in it any matter not contained in his answer; and is required simply to deny the truth of the reply, or of the parts of it which he means to dispute; and to aver the truth or competency of his own answer. No further pleadings are admissible; unless from mistake, inadvertence, or other cause; the plaintiff shall have omitted to insert in his complaint any thing material to the suit; or the defendant shall have omitted to insert in his answer any thing material to his defence; in either of which cases, on the omission being represented to the court, the plaintiff is to be allowed to prefer a supplemental complaint, or the defendant to deliver a supplemental answer; and both parties may reply and rejoin to such supplementary pleadings, in the same manner as to the original plaint and answer. But no more than one supplementary complaint, or answer, is receivable; and whenever a defendant shall refuse, or neglect, to rejoin at the time appointed; the register of the court is to enter a rejoinder for him.

In what cases supplementary pleadings may be admitted.

Restriction.

The register to rejoin for defendant in cases of refusal or neglect.

WHEN the rejoinder has been filed, the court, either immediately, or on a fixed day, (of which eight days notice to be given) is to examine the truth of the complaint, by the oaths of the parties if they mutually consent to that mode of examination, and of the witnesses who may be produced by them, if they have any. To procure the attendance of witnesses, within the jurisdiction of the court, a summons is to be issued, in the mode prescribed by Section VI, Regulation IV, 1793 (and Section VII, Regulation III, 1803, for the ceded provinces); or if the witness be a Hindoo or Mahomedan woman, of rank and quality, which, according to the customs of the country, would render it improper to compel her appearance in a court of justice, a commission of three creditable woman, sworn to the faithful execution of their trust, is to examine the witness on written interrogatories to be delivered by the parties. The regulations abovementioned, with some additional provisions in Regulation L, 1803 (re-enacted for the ceded

R. IV, 1793. § VI.

R. III, 1803. § VI and VII.

Court, how to proceed, when the rejoinder has been filed.

Summons to be issued for the attendance of witnesses.

Or commission to examine women of rank.

R. L. 1803. § II and V.

R. VIII, 1803.
§ XXV.

Oath to be administered to witnesses; and parties consenting to be examined on oath.

Penalty for non attendance, or other default, of witnesses duly summoned.

Provision for reimbursement of expence incurred by their attendance.

Attendance of witnesses, or parties, resident without the court's jurisdiction, how to be procured.

Or evidence of such witnesses, residing at a distance of more than fifty Coss, how to be obtained.

R. XLIX, 1803, § XXI.
Judges authorized to employ their registers, assistants, and principal native

ceded provinces in Section XXV, Regulation VIII, 1803) also provide for administering to witnesses, as well as to parties consenting to be examined on oath, such oaths as may be considered most binding on their consciences, according to their respective religious persuasions; and for admitting a solemn declaration, instead of an oath, when the witness may be of rank or cast, which according to the prejudices of the country would render it improper to compel him, or her, to take an oath. The same regulations authorize the apprehension, fine, and imprisonment, of witnesses duly summoned, who shall not attend; or attending, shall refuse to give evidence, or to subscribe their depositions; providing likewise for their reimbursement, by the party at whose requisition they may be summoned, for any reasonable expences incurred by their attendance; without payment of which, or securing it to the satisfaction of the court, the party summoning a witness is not only liable to lose the benefit of his testimony; but to be confined, after a decision upon the cause, until he shall discharge the sum awarded to the witness. If the personal attendance of a party, or witness, (not being a woman of rank) resident without the jurisdiction of the court in which the cause is depending, be deemed indispensably necessary by the judge trying the cause, he is to address the judge of the jurisdiction in which such party or witness may reside, requesting him to order their attendance. But when personal attendance is not requisite, and the witness shall reside out of the jurisdiction of the court in which the suit may be instituted, at a greater distance from it than fifty coss, (a hundred miles,) the judge is authorized to apply by letter, for the examination of the witness by the judge of the jurisdiction in which he may reside, upon written interrogatories to be delivered by the parties for that purpose. By Section XXI, Regulation XLIX, 1803, the judges of the zillah and city courts are authorized to employ their registers and assistants, or any of their principal native officers, in taking down the depositions of witnesses, whom they may

not

not have time to examine *viva voce* themselves. But the deposition of every witness, who may appear in court, is to be taken in open court, in the presence of the parties, or their authorized pleaders; and is to be reduced into writing in the Persian, Hindoostanee, or Bengal language, as the witness may desire. The deposition is to be subscribed by the witness with his name, or mark; and, if not taken before the judge in person, is to be also attested by the parties, or their pleaders, in testimony of their having been present. It is further provided, that if any dispute or question shall arise in the course of taking the evidence of a witness so examined, the judge shall immediately, or as soon as practicable, hear and inquire into the same in the presence of the witness, and of the parties or their pleaders; and shall pass such order thereupon as may appear to him proper. Every exhibit or written evidence is also to be produced in open court, at the trial; to be marked with some letter or number to identify it; and, if disputed, is to be duly proved by examination of witnesses. If the judge shall think it just and proper to reject any exhibit, or written evidence, offered in a depending cause, he is to endorse upon it the word "rejected;" with the names of the parties, the date of rejection, and his reasons for not admitting it; to subscribe his name to the endorsement; and to return the document to the person who produced it.

officers, in taking the depositions of witnesses.

Rule to be observed in all such cases; and whenever a witness may appear in court.

General rule concerning exhibits, or written evidence, produced in court.

WHEN the parties have been heard by their pleadings, the witnesses produced on both sides examined, and the exhibits received have been duly considered, the judge is to give judgment, in conformity with the laws and regulations, according to justice and right; and is to order costs to be paid to the party in whose favor the decree may be made; or in such manner as it may appear equitable to award by the decree, on due consideration of all the circumstances of the

R. IV, 1793, § VII and XXVI.
R. VII, 1793, § IX.
R. III, 1803, § IX, and XXVII.
R. X, 1803, § VIII.

Judgment to be given when the pleadings and evidence have been received and considered.

case.

Costs and other particulars to be inserted in the decree.

case.* The judges are enjoined to make it an invariable rule to insert in their decrees all sums paid, or payable, by the parties, on account of costs and expences of the suit; and the parties are declared not liable to the payment of any other costs or expences, excepting such as may be inserted in the decree. The judges are further directed to insert in their decrees the names of the witnesses whose depositions may have been taken; the title of every exhibit read in the cause; and the amount of the annual produce of the land, or the sum of money, or value of other property adjudged†. The decree is to be sealed with the seal of the court, signed by the judge, and dated on the day when it may be passed. The judge or the register, either at the time of making the decree, or within ten days afterwards, is to deliver, or tender, in open court, to each party, or their vakeels, an authenticated copy of the decree; with an endorsement of the date of delivery, or tender; which is also to be inserted in the records of the court; with the cause of non-delivery, if the parties, or their vakeels, shall not attend to receive the copies of the decrees prepared for them, when tendered as directed. These provisions have reference to an appeal from the decision of the zillah or city court to the provincial court of appeal. But if the cause be not appealable under the prescribed limitations, or if no appeal be preferred, the judge

Copies of decrees to be delivered, or tendered, to the parties, or their vakeels.

Entry to be made on the records if they shall not attend to receive such copies.

When, and in what manner, the judge is to proceed, in execution of his decree.

* The general rule, deducible from the regulations cited, is in substance, that the costs shall follow the judgment on the claim; viz. if the whole of the plaintiff's claim be established, he shall recover all his costs from the defendant; if his claim be altogether dismissed, he shall pay the full costs of the defendant. If the plaintiff's claim be partly proved, and partly dismissed from want of proof, the defendant shall pay his own costs and those of the plaintiff on the part proved; and the plaintiff shall pay his own costs and those of the defendant on the part dismissed. This also appears to be the most equitable principle for general observance, as well as the most likely to prevent litigiousness. But particular cases sometimes occur, in which it would be unjust to make either party pay the other's charges; and in such cases it cannot be meant by the regulations to preclude a judgment, that each party shall bear his own costs.

† By a circular order from the sudder dewanny adawlut, under date the 27th April 1796, if any objection shall have been made by the defendant to the plaintiff's statement of the cause of action; the determination passed thereupon, declaring the ascertained produce, amount, or value, of the property in litigation, is also to be stated in the decree; for the purpose of shewing whether the cause be appealable or otherwise,

by

by whom the decree has been passed, is to proceed to the execution of it, by causing possession to be delivered, if the decree be for a zemindary, talook, or other landed property; or if it be for personal property, or a sum of money, by causing the specific thing to be delivered; or the value of it, or the sum of money decreed, to be levied by the public sale of the whole, or a sufficient portion, of any property, real or personal, belonging to the party against whom the judgment may have been given; or by the attachment of his person; or if necessary, both by a sale of property, and personal attachment.*

If the defendant be committed to close custody, at the instance of the plaintiff, either whilst the suit is depending, or after the decree shall have been passed, the judge, at the time of committing the defendant, is to make an order on the plaintiff for the payment of such monthly allowance, as he may think reasonable, for the subsistence of the defendant, not exceeding four annas, nor being less than one anna per

R. IV, 1793,
§ VIII.

R. III, 1803,
§ X.

Allowance to be made by plaintiffs for subsistence of defendants, when confined at their instance.

* The application of parties for enforcement of decrees is not requisite, as the original plaint is understood to imply the plaintiff's desire of recovery by judicial process, unless intimation be given by him to the contrary. This point was discussed between the Calcutta provincial court, and the judge of zillah Jessore, in the year 1797; and the court of sudder dewanny adawlut, after considering the correspondence which took place on the subject, passed the following resolution on the 8th November of that year. "The court, on consideration of the foregoing correspondence between the Calcutta provincial court and the judge of zillah Jessore, concur in the construction given by the former to the existing regulations, respecting the enforcement of decrees, viz. that according to Section VII, of Regulation IV, 1793, the zillah judge, after passing a final judgment, should proceed to carry the same into execution, in the manner directed in the above section, without waiting an application for this purpose from the plaintiff; whose original plaint for the recovery of the property decreed is in such cases still before the court; and, with his subsequent pleadings, must be understood to imply his desire of recovery by judicial process, unless any intimation be given by him to the contrary; in which case the court receiving the same would of course suspend the execution of process in his behalf." It has also been determined by the sudder dewanny adawlut (on the 9th August 1797) that a petition to enforce a decree, presented after an interval of several years from the time of its being passed, does not subject the petitioner to the institution fee, as on a new suit; the process in such case being not to try the merits of the cause, but to "determine on the enforcement of the decree, after hearing the objections of the party against whom it is desired to be enforced." It was added however, that, if the petition for enforcement include a claim upon any person who was not a party in the cause decreed; "such claim must be prosecuted as a new suit, liable of course to the established institution fee."

Judge, how to proceed, in case of neglect or refusal.

This rule not applicable to defendants confined for disobedience.

But the spirit of it includes plaintiffs confined at the instance of defendants.

R. XLV, 1793.
R. XX, 1795.
R. V, and XII, 1796.
R. VII, 1799.
R. I, 1801.
R. XXVI, 1803.
Sales of land in execution of judicial process how to be made.

diem. The payment is to be made monthly, in advance*, to the nazir of the court; and the first payment immediately upon the confinement of the defendant. If the plaintiff shall neglect or refuse to pay the prescribed allowance, for one month after it may become due; the judge, upon the nazir's report to this effect, is to notify, by a written publication, to be fixed up in some conspicuous part of the court room, that if the plaintiff shall not, within a month after the date of the notice, pay the sum in arrear, with the allowance for one month in advance, the court will release the defendant: and he is to be discharged accordingly, if the plaintiff shall not make the payments required by such notice. This rule is not applicable to defendants who may be committed to custody for disobedience to an order of the court; the allowance to them being paid by government. But the spirit of it must be considered to include plaintiffs, whose claims may be dismissed, with costs; and who may be confined for the recovery of the latter, at the instance of the defendants intitled thereto.†

WHEN portions of estates are ordered to be sold in satisfaction of decrees of the courts of judicature, it is necessary, for the security of the public revenue, that a distribution of the assessment upon the entire estate be adjusted for the portion brought to sale; agreeably to the principles declared in Section X, Regulation I, 1793. The board of revenue, and the collectors, being in possession of the accounts required for the adjustment of the assessment in such cases; and moreover, as superintending the details of the attachment and sale of land, would occupy much of the time of the courts, and often

* This is the evident intention of the rules referred to; though, from a verbal inaccuracy, it has been doubted whether the second monthly payment be demandable at the expiration of the first, or of the second, month.

† In cases before the sudder dewanny adawlut on the 4th January 1798, and 28th February 1799, that court also considered Section VIII, Regulation IV, 1793, applicable to plaintiffs admitted to sue as paupers; when the defendants sued by them may be confined at their instance; the regulations not containing any exception, with respect to paupers, on this point.

occasion delay in the enforcement of decrees ; it is provided, by the Regulations noted in the margin, that all sales of land, in execution of judicial process, shall be made by the board of revenue at the presidency ; or under their orders, by the collector of the zillah in which the lands are situated. For this purpose, it is directed that whenever there may be occasion to have recourse to a sale of lands, in satisfaction of a decree, the court by which the decree is to be enforced, shall transmit a copy and translation of it, without any other part of the proceedings, to the board of revenue ; who are to proceed with all practicable dispatch to dispose of such portion of the lands of the party against whom the decree is given, as may be sufficient to make good the amount of it. The court by which the decree is passed, or to which the enforcement of it is committed, may however, at any time before the actual sale, countermand or postpone it, upon sufficient cause, by a precept to the collector by whom the lands may have been ordered to be sold ; or by an address to the board of revenue, if the sale shall have been directed to take place at the presidency.

A copy and translation of the decree to be transmitted to the board of revenue ; to be enforced by them, or, under their orders, by the collector of the district, in which the lands are situated.

By whom the sale may be countermanded, or postponed, in such cases.

THE judges of the zillah and city courts are further required to transmit to the collectors, and board of revenue, copies of all decrees which may be passed by them, or which may be sent to them for enforcement, affecting the proprietary right to, or possession of, any lands paying revenue to government, or held exempt from the payment of revenue ; for the purpose of making the requisite entries and alterations in the periodical public registers of land. And in all suits wherein government may be one of the parties, the court passing a judgment, whether for or against government, is directed, by a late regulation, to transmit a copy and translation of the decree, as soon as the same can be prepared, to the secretary in the judicial department ; for the information of the Governor General in Council.

R. IV, 1793,
§ IX.
R. VIII, 1795,
§ IV,
R. LVIII, 1795,
§ III, and IV.
R. III, 1803,
§ XI.
R. XXXI,
1803, § XL.
R. XXXVI,
1803, § XLIII.
Copies of all decrees affecting lands, to be sent to board of revenue and collectors.
R. II, 1805,
§ IX.

And in public suits to Governor General in Council.

IN addition to the foregoing general rules for the guidance of the zillah and city courts, in receiving, trying, and deciding the suits cognizable by them, and in carrying into execution the decisions passed by them, many subsidiary rules have been prescribed; of which the most important is that for preserving to the natives their own laws and usages, in certain cases; as already quoted from the judicial plan of 1772, and continued in the existing regulations, in the following terms: "In suits
 " regarding succession, inheritance, marriage, and cast, and all
 " religious usages and institutions, the Mahomedan laws with
 " respect to Mahomedans, and the Hindoo laws with regard
 " to Hindoos, are to be considered the general rules by which
 " the judges are to form their decisions." In Section III, Regulation, VIII, 1795, for the province of Benares, it is added, that "in cases in which the plaintiff shall be of a different
 " religious persuasion from the defendant, the decision is to be
 " regulated by the law of the religion of the latter; excepting
 " where Europeans, or other persons not being either Mahomedans or Hindoos, shall be defendants; in which cases the
 " law of the plaintiff is to be made the rule of decision in all
 " complaints and actions of a civil nature." The Mahomedan and Hindoo law officers, attached to the several civil courts, are required to expound the law of their respective persuasions; and the judges are directed to be guided by their exposition, in all cases wherein they may have no reason to doubt the accuracy of it; but if, in any case, they entertain such doubt, either from objections of the parties, founded on other law opinions exhibited by them; or from a reference to the known books of Mahomedan or Hindoo law; or, from whatever cause, if the court trying the suit consider the exposition given by its immediate law officer insufficient; it is declared at liberty to obtain a further exposition from the law officers of the superior courts by a reference of the case to them, through the judges of those courts. But no point of law is to be referred to individuals not acting in a public capacity; and to whom consequently

Rule for preserving to the natives their own laws and usages, in suits regarding succession, inheritance, marriage, cast, and all religious institutions.
 R. IV, 1793.
 § XV.
 R. VIII, 1795.
 § III.
 R. II, 1798.
 § IV.
 R. III, 1803.
 § XVI.

By whom the Mahomedan and Hindoo laws are to be expounded.

consequently no responsibility attaches; although law opinions, quoting or referring to authorities, may be received from parties, in support of their claims; and, if it be deemed proper by the courts receiving them, referred to their law officers or to those of the superior courts. Upon the wise, just, and humane principle, which dictated these provisions, it will be sufficient to observe, that the translations of books of law, Hindoo and Mahomedan, made under the encouragement of the British government, have materially contributed to give effect to it, by enabling the judges of the civil courts to inform themselves upon general points of Mahomedan and Hindoo law, and to investigate the expositions of the native law officers attached to their respective courts. This salutary examination and control, it may be expected, will become still more efficient, under the means now afforded by the College of Fort William, to study the Sanscrit and Arabic languages, and to obtain a more perfect knowledge of the laws from original authorities*.

Translation of books of law have contributed to give effect to these provisions.

And further means of controlling the law officers may be expected from the studies of the College of Fort William.

A FURTHER provision, that “the zillah and city courts are
 “not to pass a decree in any suit concerning the succession or
 “right of inheritance to a zemindary, talook, land, house,
 “or other real property, to which there are more claimants
 “than one, who, by the Hindoo or Mahomedan law (respect
 “being had to the religion of the claimants) would be entitled
 “to a portion of the property; excepting the property be,
 “by the decree, adjudged to all the claimants, in the proportions to which they may be respectively intitled;” is rather a particular application of the preceding general rule, than a new rule; but, with a view to give it the fullest effect, the term “claimants” is construed to include all persons legally intitled to claim a share of the property in dispute, as well as the actual claimants in the cause before the court; and previ-

R. III, 1793;
 § XIII.

R. II, 1803,
 § XIX.

Application of preceding rules directed, in suits concerning the succession, or right of inheritance, to landed property.

* Foreign laws and customs, not being Hindoo or Mahomedan, are ascertainable, as in England, by evidence: and the advocate general recommended this mode of ascertaining them in a case referred for his opinion, by the sudder dewanny adawlut, in February 1799.

Proclamation
usual in such
cases.

Spirit of the
rule, for obser-
ving Mahome-
dan and Hindoo
laws, declared
applicable to
cases of slavery.

Remark on dif-
ference between
this rule, and
the act of Par-
liament, which
defines the ju-
risdiction of the
supreme court,
over the native
inhabitants of
Calcutta.
21. Geo. III,
cap. 70. § 17.

All cases of an
intricate or spe-
cial nature, not
expressly pro-
vided for by
the regulations,
within the in-
tention of the
general rule.

R. IV, 1793,
§ XVI.
R. III, 1803,
§ XVII.

In what manne-
r opinion of law
officers to be
taken.

ously to giving judgment in the suits described, it is usual to issue a proclamation, requiring all persons, intitled to any portion of the litigated property, to notify their right and claim thereto, within a limited period; that the same may be included in the court's decree; or their right, if disputed, reserved for investigation by a separate suit. It may be useful to add, that on a reference to the fudder dewanny adawlut in the year 1798, the court were of opinion that the spirit of the rule, for observing the Mahomedan and Hindoo laws, was applicable to cases of slavery; though not included in the letter of it; and this construction was confirmed by the Governor General in Council, under date the 12th April 1798*. It is observable, that the rule in question is not so extensive as the act of parliament, which defines the jurisdiction of the supreme court over the native inhabitants of Calcutta, with respect to "all matters of contract and dealing between party and party;" and considering the very comprehensive nature of this general head of law, it might be productive of much practical inconvenience, as well as delay of justice, if a reference to the law officers were required in every instance of contract or dealing, however inconsiderable. But in all cases of an intricate or special nature, not expressly provided for by the Regulations, it is customary, and obviously according to the spirit and intention of the general rule above cited, that the matter in contest be determined by the law of the parties.

WHEN a reference to the law officers is deemed necessary, a statement of the facts, on which the question of law may arise, is to be made out in writing, signed by the judge of the court, and delivered to the law officer for his opinion; which he is to

* For the Mahomedan and Hindoo laws of slavery, consult the translations of the *Hedaya* and *Hindoo Digest*. Also Sir W. JONES' versions of *Mennu*, and *Al Sirajjyab*. Mr. HAMILTON's just observations on the fifth book of the *Hedaya* are nearly as applicable to Hindoo, as to Mosulman, bondage. Yet the yoke is degrading to human nature, and might be gradually loosened.

return on the same paper, or on a paper annexed to it, attested with his signature. The judges of the zillah and city courts are strictly enjoined not to order, or allow, a report of any matters of fact, relating to a cause depending before them, with a view to pass a decree thereupon, to be made to them by any officer of the court, or other person, excepting cases in which special authority for that purpose may be given by the regulations. But in cases of disputed property, regarding lands, houses, or boundaries, in which the court may deem a local investigation proper, it is authorized to appoint an aumeen (commissioner), who is to be sworn to make a faithful report of the matters he may be directed to investigate, and whose written report, subscribed with his name, is to be received as evidence in the cause, with regard to such matters only. The allowance to the aumeen, as fixed by the court, and any necessary expence attending the execution of his commission, are to be added to the costs of suit, and paid by the person against whom the decree may be passed. It is however a general rule that the plaintiff (and the spirit of it is equally applicable to the defendant) shall, in the first instance, "pay the charges of all" process attended with expence which may be issued in his "behalf previous to the decision of the suit".

No report of facts to be made by any officer of the court, or other person, except in cases authorized.

R. IV, 1793, § XVII.
R. III, 1803, § XVIII.

A local investigation may be ordered in certain cases.

R. IV, 1793, § XVIII.
R. III, 1803, § XIX.
General rule for payment of charges in the first instance.

R. XVI, 1793, extended to Benares by R. XV, 1795.
R. XV, 1795.
R. XXI, 1803.
What suits may be referred to an arbitrator, chosen by parties, or appointed by court.

And in what suits courts to recommend election of one or more arbitrators, by the parties.

What persons eligible as arbitrators.

IN all suits for money, or personal property, the amount or value of which shall not exceed two hundred sicca rupees, the courts are empowered, with the consent of the parties, to refer the suit to an arbitrator, who may be either chosen by the parties or their vakeels, or appointed, with their consent, by the court. And in suits concerning disputed accounts, partnerships, debts, doubtful or contested bargains, or non-performance of contracts, in which the cause of action may exceed two hundred rupees, the court are to recommend to the parties to submit the decision of the matters in dispute to one or more arbitrators, of their own election. The judges are enjoined to afford every encouragement in their power to persons

Mode of proceeding to be observed in cases of arbitration; and provisions for delivery and execution of award.

Award not to be set aside, except for corruption, or partiality.

R. VIII, 1794, § XIII, extended to Benares by R. LIV, 1795, R. VII, 1799, § XV. R. V, 1800, § XIV. R. XXVIII, 1803, § XXXII.

In what causes the judges are empowered, and required, to refer accounts for adjustment to the collectors.

In what manner such references are to be made.

persons of character and credit, to become arbitrators; but are not to employ any coercive means for that purpose: nor to permit any of their public officers, or private servants, to be arbitrators in a cause. Regulation XVI, 1793, (re-enacted for the ceded provinces by Regulation XXI, 1803) prescribes the mode of proceeding to be observed when a suit is submitted to arbitration; and provides that the final award be delivered to the court, under the seal and signature of the person, or persons, by whom it may be made, together with all the proceedings, depositions and exhibits in the cause; that the court is to pass a decree conformably with the award; to be carried into execution in the same manner as other decrees of court; and that the award is not to be set aside, except it be fully proved to the satisfaction of the court, by the oaths of two credible witnesses, that the arbitrators have been guilty of gross corruption or partiality.

In all causes concerning demands, arrears, or exactions, of rent, and other matters heretofore cognizable in the revenue courts; between the landholders or farmers of land, and their under tenants; or between any other persons concerned in the collection or payment of the land-rents; and in which neither the collectors, or their public officers or private servants, or government, may be parties; the courts are further empowered to refer to the collector of the district, for adjustment and report, any accounts which it may be necessary to adjust for the decision of the suit; and the judges are required to make such reference in every cause, of the above description, which neither themselves or their registers may be able, from other avocations, to try and determine without delay; and which may not be cognizable by the native commissioners acting under them. A precept to the collector is to be issued in such cases, under the signature of the judge and seal of the court, specifying the accounts and papers referred; and the time by which the report is to be made. The judge may, at the same time, command

mand the parties or their vakeels (being any persons duly empowered to act for them) and their witnesses, to attend the collector; and empower the latter to examine the witnesses, as well as the parties if they agree to be so examined, upon oath. The collector is to submit his report by the time limited, or assign his reasons for not having been able to complete it, and the judge, upon the receipt of the collector's report, may either confirm, set aside, or alter his adjustment of the accounts, or pass such decision respecting them as shall appear to him proper. The declared object of this provision is "to expedite the administration of justice, by relieving the zillah and city courts from the trouble of arranging and comparing long and intricate accounts: the adjustment of which is frequently necessary for the decision of suits between individuals respecting land rents;" and it is much to be wished that the great importance of this object, to the parties concerned, may induce more frequent references to the collectors in the cases stated, than have hitherto taken place. It may also be hoped that the very useful aid, which the collectors have it in their power to afford, towards the due administration of justice, when such cases are referred to them, will induce their ready and zealous attention to all references which may be made to them, in pursuance of this part of the general regulations for their guidance.

Report to be made by the collector.

And decision to be passed thereupon by the judge.

Object and importance of this provision.

THE causes depending in the zillah and city courts are to be brought on for trial according to the order in which they may be filed; excepting cases in which it may be otherwise directed by any regulation; or in which the judge may think it proper, for special reasons, which he is to state at large upon the record of the trial, to bring on the cause before its turn. "If the plaintiff at any time neglect to proceed in his suit for six weeks, it is to be dismissed, unless he can shew good and sufficient cause for not having proceeded in it; and the court is to award to the defendant the whole or any part of the costs incurred by him in the suit, as it may deem equitable."

R. IV, 1793, § XIX.
R. III, 1803, § XX.
Order, in which causes are to be brought on for trial.

R. IV, 1793, § X.
R. III, 1803, § XII.
Rule for non-suits, in cases of neglect for six weeks.

The

Explained by
fudder dewan-
ny adawlut, as
not precluding
a new suit.

Further expla-
nation of the
neglect, to which
the rule applies;
and the mode of
proceeding re-
quired, in the
application of it.

Reason for sta-
ting this ex-
planation.

The judge is, at the same time, directed to record upon the proceedings, his reasons at large for dismissing the suit of the plaintiff, or allowing him to prosecute it after he shall have neglected to proceed in it for six weeks; and the zillah and city courts were informed by a circular notice from the fudder dewanny adawlut, dated the 22d August 1795, that “ the
“ plaintiffs in causes dismissed under this rule have the option
“ of re-instituting them under the regulations;” viz. by instituting a new suit in conformity with the general rules in force. The court, on the 5th October 1797, upon a reference from the judge of zillah Backergunge, further declared the meaning and intent of the above provision to be “ that if a plain-
“ tiff shall neglect, for the term of six weeks, to perform any
“ act required from him in the regular prosecution of his suit,
“ he is to be nonsuited; but *before* the judgment of nonsuit is
“ passed against him, he is to be called upon to shew cause for
“ not having proceeded in it, and such cause is to be admitted
“ to bar the nonsuit, if good and sufficient; but not otherwise.” This explanation of a penal rule, which has been sometimes misapprehended, is here introduced, with a view to guard against its erroneous application; to the serious injury of the parties affected by it, who, till lately, were liable in consequence to all the expences of a second suit; and are still exposed to expence and loss of time in obtaining a reversal of the nonsuit, by an appeal to the provincial court, under the provisions contained in Section XI, Regulation II, 1805; and the former rules therein referred to.

R. IV, 1793, §
XX.
R. VIII, 1795,
§ IV and IX.
R. III, 1803,
§ XXI.
R. XLIX, §
XX.
In what languages
process of
civil courts to
be written or
printed, and
how to be is-
sued.

ALL orders and process of the civil courts, which may be directed to be served, or executed, on any person, are to be written, or printed, in the Persian and Bengal languages in the provinces of Bengal and Orissa, and in the Persian and Hindoostanee languages in Bahar, Benares, and the ceded provinces; to be sealed with the seal of the court; and to be signed by the judge or register. When process is issued against any person

person not present at the place where the court may sit, and a peon, or peons *, may be required for serving, or executing it, each peon is to be paid by the party, in whose behalf it may be issued, four annas (in Benares two annas) per day, except in districts where custom may have fixed the subsistence money of peons at a lower rate; but no greater number than two are to be deputed to serve or execute any process; and one only, unless in particular cases two may appear necessary.

Allowance to peons, not on the public establishment, who may be required to execute it.

If any zemindar, talookdar or other landholders, or a farmer of land holding his farm immediately from government, or any other person, shall resist, or cause to be resisted, any process, rule, order, or decree, of a zillah or city court; upon proof of such resistance, after the offender shall have been duly summoned to answer to the charge, and on non appearance proceeded against by proclamation, the court is empowered to decree the forfeiture of his zemindary, talook, or, other estate, in which the resistance may have been made; or, if made out of the limits of the offender's estate, the forfeiture of any landed property he may possess within the jurisdiction of the court whose process shall have been resisted: or, if the offender be a sudder† farmer, that his lease be cancelled from the expiration of the current year: or if he be neither a landholder, or sudder farmer, or although such, if the judge of the court, whose process may have been resisted, shall be of opinion that a fine to government is a more proper and adequate punishment for the offence, than a forfeiture of the offender's estate or farm, he is authorized to adjudge the payment of such fine to government as may appear proper, upon a consideration of the offender's situation and circumstances, and the

R. IV, 1793, § XXII, to XXIV.
R. VIII, 1795, § V, to VIII.
R. IX, 1799.
R. III, 1803, § XXIII, to XXVI.

Penalties for resistance to the process of a zillah or city court, by a landholder, principal farmer or other person.

* More properly called *Piádahs*; being literally footmen; and corresponding with the beadles, apparitors, and messengers, of the English courts; but here meaning such only as are employed without a fixed salary. Those upon the public establishments, who receive an allowance from Government, are denominated *Chuprásees*, or badge peons.

† Literally original, head, superior; opposed to *Mofussil*, subdivided, subordinate, inferior. With respect to tenures, it is usually applied to such as are held *in capite*, or immediately from Government. *Sudr-o-Mofussil* also denote the town and country; or more commonly the capital and its dependencies.

R. VII, 1799,
§ XXIV.
Judgments
given in such
cases subject to
the general pro-
visions for ap-
peals.
And if for the
forfeiture of an
estate or farm
commutable to
a fine, by the
Governor Gene-
ral in Council.

offence of which he may be convicted; subject to the general provisions for appeals from the judgments of the zillah and city courts*. But in all cases wherein a final decree may be passed for the forfeiture of an estate, or farm, on account of resistance of process, a copy of the decree and of the proceedings held upon the case, is to be transmitted to the Governor General in Council; to whom is reserved an option of either ordering the decree to be executed, or of commuting the forfeiture for such fine as he may think adequate, and the decree of forfeiture is not to be carried into execution until notice be received of his confirmation of it.

R. XLIX, 1793.
R. XIV, 1795.
R. V, 1798,
§ VII.
R. XXXII,
1803.
R. II, 1805,
§ V, and XIII.
Summary pro-
cesses authorized
in cases of
forcible dis-
possession from
land, or other
property, for
immediate re-
covery of
possession.

RESERVING for the latter part of the present section the general regulations, which relate indiscriminately to the whole of the civil courts, of appellate as well as of original jurisdiction; and for the succeeding parts of this analysis the provisions made for summary judicial processes, in cases of arrears of rent; as well as in certain cases connected with the public revenue; it may be stated, in this place, that besides the powers vested in the zillah and city courts, for the trial and decision of regular suits, under the rules which have been specified, they are empowered by Regulation XLIX, 1793, (extended to Benares by Regulation XIV, 1795; and re-enacted for the ceded provinces by Regulation XXXII, 1803); for the purpose of preventing affrays respecting disputed boundaries, lands, crops, and other property; to take immediate cognizance of complaints of forcible dispossession from land or crops; (as well as from tanks, reservoirs, wells, or water courses in the province of Benares); and upon the previous possession (or rather the violent dispossession) of the complainant being proved to their satisfaction, to cause the land, crops, or other property of which he may have been forcibly dispossessed to be restored to him; or the value of

* The specification of one thousand, instead of five thousand, rupees, as the standard for appeals, in Sections XXIII, XXV, and XXVI, of Regulation III, 1803, is evidently an oversight. *Vide* R. IV, 1803, § XXIII, XXIV, XXVI. And R. VII, 1799, § XXIV.

the crops, if damaged, destroyed, or not forthcoming, to be paid to him; with costs and damages; leaving the dispossessor to prefer his claim to the property in dispute by a regular suit in the dewanny adawlut; unless the dispossessor, or any persons accompanying him, in taking possession by force of the disputed property, shall kill, wound, or violently beat any person; in which case his right to the property in dispute is to be adjudged forfeited to the complainant; or if both parties assemble armed men; the one to take, the other to keep, possession of the disputed property; and a fray ensue, in which any person may be killed, wounded, or violently beaten; the disputed property is to be adjudged forfeited to government. It is declared however, by Section V, Regulation II, 1805, that the summary enquiry and restoration to possession, authorized by the regulations abovementioned, "shall be restricted to cases of forcible dispossession, which may be complained of, to the proper zillah or city court, within three months after such dispossession shall have taken place; unless it be clearly shewn and established that the complainant was prevented by good and sufficient cause from preferring his complaint, either in person or by his representative, within that period." It is further explained by Section XIII, that when the zillah and city judges, from the urgency of other business, may not be able to make the prescribed enquiry, in this and other instances wherein a summary process is allowed by the regulations, with the expedition requisite in such cases, they may refer the same to their registers; provided that the cause of action be such as would be referable to them in a regular suit, under the rules hereafter stated; and provided also, that the judge, who may have referred any such case, for summary enquiry by his register, may at any time recal the same, if he should see occasion for it; or, if he should subsequently find time to investigate the case himself. The judge is likewise empowered, in any particular case which may appear to require it, to revise and amend

In what cases a judgment of forfeiture to be passed against the dispossessor.

Or the disputed property to be adjudged forfeited to Government.

Period limited for the application of the summary process allowed on complaints of forcible dispossession.

In what cases the summary enquiry authorized in this and other instances, may be referred by the zillah or city judge to his register.

And under what provisos.

amend any order passed by his register in such cases, on representation from the parties or otherwise.*

What regular suits may be referred to the registers of the zillah and city courts.

R. XIII, 1793, § VI.
R. VIII, 1794, § II, to XI.
R. XXXVI, 1795, § II, to IV.
R. LIV, 1795.
R. III, 1800.
R. XII, 1803, § VI, to X.
R. XLIX, 1803, § VI, and XXXI.

R. XIII, 1793, § VI, rescinded by R. VIII, 1794.

To prevent the time of the zillah and city judges from being occupied with the trial of petty suits, and consequently to enable them to determine causes of magnitude with greater expedition, they were empowered, by Section VI, Regulation XIII, 1793, to authorize the registers of their respective courts to try and decide suits for money, or any personal property, in which the amount or value contested should not exceed two hundred ficca rupees; and suits for malgoozary land, the annual produce of which should not be above two hundred ficca rupees; or for lakheraj land the proceeds of which should not be more than twenty ficca rupees per annum. But the same regulation directing that the decrees passed by the register were to be countersigned by the judge, to denote his approbation of them; and were not to be considered valid unless they were so countersigned; he was obliged to revise the proceedings of the register in every case; which often occupied as much of his time as would have been required for the trial of the suit in the first instance; and tended to defeat the object of the reference. With a view therefore to the more full attainment of that object, the section above mentioned was rescinded by Regulation VIII, 1794, and the decision of the register was declared final in all suits referred to him for money or personal property, the amount or value of which should not exceed twenty-five ficca rupees;

* The court of sudder dewanny adawlut, on the 21st June 1803, directed the provincial courts to inform the zillah and city judges, that complaints of forcible dispossession, preferred under Regulations XLIX, 1793, and XXXII, 1803, are not to be filed as regular suits; and left for investigation according to their order and number; as such practice must defeat the end proposed of preventing affrays and bloodshed; that the prescribed summary enquiry is to be made immediately upon the receipt of such complaints; and upon proof of the complainant's forcible dispossession, the land and other property is to be restored to him, leaving the dispossessor to a regular suit; but if it appear that the party complaining has not been forcibly dispossessed, he is to be referred to a regular suit for the prosecution of his claim to the property in dispute.

under a discretionary power, reserved to the judges of the zillah and city courts, of revising the decisions passed by the registers in such cases, whenever the decrees of the latter might appear to them obviously unjust or erroneous. It was, at the same time, provided, that from all decisions passed by the register, in suits for real property, or for personal property exceeding twenty-five sicca rupees, an appeal should lie to the provincial court of the division, under the rules prescribed regarding appeals from decisions passed by the judge. But this provision being found to interfere considerably with the more important duties of the provincial courts of appeal, it was enacted by Regulation XXXVI, 1795, that the appeal from the register's decision, before allowed to the provincial court, should in future lie to the judge of the zillah or city court; under rules similar to those prescribed regarding appeals to the provincial courts from decisions passed by the judges; except that the petition of appeal is to be presented within thirty days,* either to the register or to the judge; the latter of whom is empowered to admit the appeal after the prescribed time, if the appellant can shew sufficient cause for not having filed his petition within the limited period; and the judge, on admitting an appeal, is to cause the petition, endorsed with the word "admitted" under his official seal and signature, to be sent to his register; who is thereupon to submit to the judge all the original proceedings and papers, with his decree, in the cause appealed. This rule and limitation, re-enacted for the ceded provinces by Regulation XII, 1803, are still in force for those provinces; where there has not yet been any considerable accumulation of causes depending before the judges of the civil courts. But in Bengal, Behar, Orissa, and Benares, it has been found necessary, for the more expe-

Alteration respecting appeals from the register's decisions made by R. XXXVI, 1795.

Rule and limitation in force for the ceded provinces, under R. XII, 1803; VI, to X.

New rule enacted for Bengal

* Originally from the date of the register's decision; but, under Section VIII, Regulation II, 1805, to be calculated from the date on which a copy of the decree appealed from may have been delivered, or tendered in open court, to the appellant or his vakeel.

Bahar, Orissa
and Benares, by
R. XLIX, 1803,
§ VI.

R. VIII, 1794, §
VI, rescinded by
R. XLIX, 1803,
§ VI.

An appeal
allowed in all
cases from the
register's deci-
sion, to the zillah
or city, judge.

R. III, 1800,
granting appel-
late jurisdiction
to the registers,
in certain cases,
also rescinded
by R. XLIX,
1803, § VI.

ditions decision of suits in the zillah and city courts, to empower the judges by Section VI, Regulation XLIX, 1803, (whenever, on consideration of the number of causes under reference to their registers, and the number depending before themselves, it may appear to them conducive to the more speedy administration of justice) to refer to their registers, for trial and decision in the first instance, any causes depending in their respective courts, for money or other personal property, not exceeding in amount or value the sum of five hundred ficca rupees; or for malgoozary land, the annual produce of which may not exceed five hundred ficca rupees; or for lakheraj land the produce of which may not be more than fifty ficca rupees per annum; or any other description of real property, the computed value of which may not be above five hundred ficca rupees. Section VI, Regulation VIII, 1794, whereby the decision of the registers was made final in suits for personal property not exceeding twenty five ficca rupees, was at the same time rescinded; as suits within this amount may some times involve questions of a general and important nature, wherein an erroneous decision, not revocable by appeal, might be of serious ill consequence; and it is provided, that an appeal shall lie to the zillah and city judges from all decisions passed by their registers, if the appeal be preferred in conformity to Section III, Regulation XXXVI, 1795, and the general rules for appeals therein referred to. To enable the zillah and city judges to maintain the most efficient control over the native commissioners (hereafter mentioned) acting under them in the administration of justice, and to bring the official conduct of such commissioners, in all cases, before the judges; as well as to enable the parties in every suit, tried in the first instance by a native commissioner, to obtain, on appeal, a further trial and decision by the zillah or city judge; it was also deemed proper to discontinue the appellate jurisdiction, which, by Regulation III, 1800, had been vested in the registers of the zillah and city courts, for the trial of appeals

appeals from decisions of the native commissioners, when the property in dispute might not exceed twenty-five sicca rupees. The judges are further declared, by Regulation XLIX, 1803, to be at all times authorized to recal from their registers any suits referred to them, which may not have been decided; and which, for the more speedy administration of justice, or for any other reason, they may deem it proper to try and determine themselves in the first instance; or to refer for trial to a native commissioner, if the suit be referable to such under the regulations.

Judges may, at any time, recal suits referred to their registers, if not decided.

For hearing and deciding the causes referred to the registers of the zillah and city courts, the judges are to cause them to sit three days in every week; or oftener if their other avocations will permit. The register is to try the suits referred to him in open court; and is to be guided by the same rules as are prescribed for the trial of suits before the judge. The zillah and city judges may permit their registers to cause the depositions of witnesses, in suits referred to them, to be taken before their assistants, or any principal native officer, in the mode, and under the restrictions, specified in Section XXI, Regulation XLIX, 1803, whenever, from the number of causes depending before the register, it may appear to them indispensably necessary for the speedy determination of such causes. But this power is not to be exercised by any register without the permission of the judge, communicated to him by a written precept, which is at all times revocable when the judge may consider it no longer necessary to continue to his register the permission thereby granted. All process whatever, which it may be necessary to issue in suits referred for trial to the register, is to be issued under the seal of the court and signature of the register; to be executed by the officers of the court; and to be considered in every respect of the same force and validity as similar process issued in causes under trial before the judge. The judges of the zillah and city courts are also generally empowered

Registers, how often to sit and by what rules to be guided in trying causes referred to them.

May cause depositions of witnesses to be taken, as authorized by R. XLIX, 1803, § XXI; with special permission of the judge.

Process in suits referred to the register how to be issued, and executed.

Validity of such process.

R. XLIX, 1803, § XX.

What other pro-
cess may be
signed and issu-
ed by the re-
gisters and their
assistants.

empowered to employ their registers and assistants in signing and issuing any process of court, which they may deem proper to be signed and issued by them; and to which the signature of the judge may not be specially required by any regulation.

Rules for ap-
pointment of
native com-
missioners.

R. XL, 1793.
R. XXXI, 1795.
R. XXXVI,
1795, & V.
R. XVIII, 1797.
R. XVI, 1803.
R. XLIX, 1803.

Three denomi-
nations of com-
missioners.

Aumeens,
Referees.

Salisan,
Arbitrators.

Munsiffs,
Native justices.

Authority of the
latter, under R.
XVI, & XLIX,
1803.

For the further relief of the zillah and city courts from the trial of petty suits; as well as to save the parties and witnesses in such suits from the inconvenience to which they would be subjected by the necessity of attendance at the court of the zillah or city, if this were the only local tribunal; and to promote, by additional subordinate judicatures, the general speedy administration of civil justice; native commissioners are appointed under the regulations specified, to hear and decide, in the first instance, suits for money, or other personal property, not exceeding in amount or value fifty sicca rupees. Such commissioners are of three denominations viz. aumeens, or referees, salisan, or arbitrators, and munsiffs, or native justices. In the first capacity they are authorized to try and determine such suits only as may be referred to them by the judge of the city, or zillah, in which they are appointed. In the second capacity, they may hear and decide, without reference from the judge, any suits within the prescribed limitation, which may be voluntarily submitted to their award by arbitration bonds. In the third capacity stated, they have an original jurisdiction, which was formerly limited to the cognizance of the suits preferred to them against under-renters or tenants of land, in the estate or farm included within the extent of their commission; but for the general convenience of the inhabitants, residing at a distance from the zillah courts, the authority of native commissioners, vested with the powers of munsiff, under Regulations XVI, and XLIX, 1803, has been extended "to receive, try, and determine all suits preferred to them against any native inhabitant of their respective jurisdictions, for money or other personal property not exceeding in amount or value the sum of fifty

fifty sicca rupees; provided the claim be really for money due, or property belonging, to the plaintiff; or for the value of such property; and be not for damages on account of alleged personal injuries; or for personal damages of whatever nature; no claim for which" (in consequence of experienced litigiousness in such cases) "is to be heard by any commissioner without an order of reference from the zillah dewanny adawlut." The commissioners appointed to act as muniffs, under the regulations last mentioned, are also empowered to act as referees and arbitrators; and are to receive a funnud under the seal and signature of the judge of the zillah, in which they may be appointed, according to the form prescribed by the tenth clause of Section XXIX, Regulation XVI, 1803, and the tenth clause of Section XIV, Regulation XLIX, 1803. But a separate form of funnud is prescribed, by Section VI, Regulation XL, 1793, and Section IV, Regulation XVI, 1803, for commissioners appointed referees and arbitrators only; and they are restricted from exercising the powers of muniff without special authority for that purpose. The whole of the native commissioners are to be nominated by the zillah and city judges, and approved by the sudder dewanny adawlut; without whose sanction no person is authorized to act as commissioner; nor can any person appointed be removed from his office, during the period of his commission, without sufficient cause proved to the satisfaction of that court. The number of commissioners, in the cities of Dacca, Moorshedabad, Patna, and Benares, is directed to be such that the judge may not have occasion to refer to them respectively more causes than they be able to determine with promptness; and in the several zillahs, where local circumstances will admit, is to be such, that the defendant may not be obliged to proceed a greater distance than five coss to answer any suit that may be preferred against him. It is further provided, that the general local jurisdiction of a muniff be the same with that of the police jurisdiction (where police doragahs have been appointed) in which he may be empowered to officiate; but the sudder dewanny

Muniffs, are
powered to act
also as referees
and arbitrators.

But referees and
arbitrators re-
stricted from
exercising pow-
ers of muniff.

Native commis-
sioners, by
whom to be no-
minated, appro-
ved, and removed.

Their number,
how to be re-
gulated.

Further provisi-
on for local ju-
risdiction of
muniffs.

wanny adawlut, on the report of the zillah judge, may authorize a deviation from this rule, whenever it may appear advisable to appoint more than one muniff, within a police jurisdiction; or to include more than one police jurisdiction within that of a muniff. The appointment of commissioners with the powers of muniff has not, however, been deemed necessary within the cities, where courts are established; and no muniff is to be appointed within five coss of the station where a zillah court is held, unless the zillah judge shall, for any particular reason, consider it advisable to appoint a muniff within such distance; in which case he is to report the same for the determination of the sudder dewanny adawlut. In the selection of commissioners to act as muniffs, the judges are not restricted to any particular descriptions of persons; but are required to be particularly careful in selecting persons of good character and sufficient ability; as well as duly qualified by their education and past employments to discharge satisfactorily the trust reposed in them; and are to report to the sudder dewanny adawlut the information they may have obtained on these points, respecting any person proposed by them to be vested with the powers of muniff. The cauzees of the four cities are to be nominated referees and arbitrators, in virtue of their offices; and the judges are to nominate a sufficient number of other persons, of acknowledged character and ability, who may be willing to undertake the trust. The cauzees of the towns, or places, in which the several zillah courts are established, are also to be referees and arbitrators in virtue of their respective offices. But the other commissioners, to act as referees and arbitrators only, are to be selected by the zillah judges from the descriptions of persons specified in the third clause of Section V, Regulation XL, 1793; Section V, Regulation XXXVI, 1795; and the fifth clause of Section III, Regulation XVI, 1803; namely, proprietors of land, managing their own estates; farmers of land, holding their farms from Government; tehseeldars or native collectors of the public revenue; managers of joint undivided estates, or of the

And restriction of their appointment within the cities, where courts are established; as well as within five coss of any zillah court.

Rule for the selection of persons to act as muniffs.

Who are to be referees and arbitrators in the four cities.

And in the several zillahs.

the estates of disqualified landholders; under renters, or officers of credit and responsibility intrusted with the collection of land-rents; creditable merchants, traders, and shopkeepers, or other persons of property and character, residing in towns, bazars, hauts, gunges or aurungs, of sufficient extent to require a separate commissioner; ultumghadars and jagheerdars, or their managers; and mofuffil cauzees. The judges are enjoined to nominate, for the offices of referee and arbitrator, such of the persons above specified as may be best qualified for the trust by their character and ability. But their commissions are to remain in force only whilst they hold the situations, in virtue of which they may have been selected; unless for special reasons the fudder dewanny adawlut should judge it proper to dispense with this rule: and that court may at all times order the recal of any commission granted, if the continuance of it appear unnecessary, or inexpedient.

Duration of
commissions to
referees and ar-
bitrators.

And general
power of recal,
vested in fudder
dewanny adaw-
lut.

THE rules enacted for the guidance of the native commissioners, in trying and determining the suits cognizable by them, are detailed in the regulations referred to; and in cases for which no express provision may have been made, they are directed to observe, as nearly as may be practicable, the rules prescribed for the administration of civil justice in the courts of dewanny adawlut. Those appointed to act as muniffs must be sworn to the faithful execution of the trust reposed in them; and the whole of the commissioners are required to take the established form of oath, or to subscribe a declaration to the same effect. They are not to allow their officers, servants, or any other persons, to interfere in the trial of suits depending before them; and no cause is to be referred to, or tried by a commissioner, in which he, or any of his immediate servants, may be a party, or interested. They are empowered to summon parties and witnesses; (not being women whose rank and cast may be such as to render it improper to require their public appearance;) and upon non-attendance,

Rules for guid-
ance of native
commissioners,
in trying and
determining the
suits cognizable
by them.

Powers to sum-
mon parties and
witnesses, and to
attach personal
property in cer-
tain cases.

attendance, or the refusal of defendants to give security for their appearance, if the suit be for more than ten rupees, or in causes within that amount if the defendant is about to abscond, are authorized to attach any personal property belonging to the defendant, or non-attending witness, not exceeding the amount or value sued for. They are also empowered to impose a fine on any party, vakeel, or witness, for disrespectful behaviour to the commissioner, whilst in attendance upon him for the trial of a suit. But no commissioner is to enforce his own decision, in any case whatever: or to confine a party, vakeel, or witness, in any suit which may come before him. The zillah and city courts are to enforce all decisions passed by the commissioners, whether as referees, arbitrators, or munsiffs; and for this purpose reports of all causes decided by them, with the original papers and documents in each cause, are to be transmitted by them monthly, on the fifth of each succeeding month. The commissioners are further required to deliver copies of their decrees to the plaintiff and defendant, or their vakeels, within three days after the time of decision. All suits decided by them, are appealable to the judge of the zillah or city in which they are appointed; provided the petition of appeal be presented within thirty days after the delivery, or tender in open court, of a copy of the decree, to the appellant or his vakeel. And a discretionary power is vested in the judge to admit the appeal, after that period, if the appellant can shew satisfactory cause for not having presented his petition within the time limited. The zillah and city judges are likewise authorized, for any reason that may appear to them sufficient, to bring up for trial before themselves, or their registers, any causes depending before the commissioners; and in all cases where a suit tried in the first instance by a native commissioner may appear not to have been sufficiently investigated, the judge may either refer such cause back to the commissioner by whom it was originally tried; or to any other commissioner

Also to impose a fine for disrespect to them, in the discharge of their duties.

But not to confine any person, or enforce their own decisions.

Monthly report of decisions to be made, for enforcement, to the zillah and city courts.

Copies of decrees to be delivered within three days.

And all suits decided by commissioners appealable to those courts.

R. II, 1805, § VIII.
Within thirty days after delivery, or tender, of a copy of the decree.
Or, subsequently, at discretion of the judge.

Judge may also bring before himself, or register any cause depending before a commissioner.

And, in all cases not sufficiently investigated by a commissioner, may call for further evidence; or refer the cause to the same, or another com-

commissioner competent to try the same; or to his register; with instructions to take and transmit the further evidence required; or, after taking further evidence to pass a new decision in the cause; or to try and determine the cause *de novo*; subject, in either of the two latter cases, to a further appeal to the judge, against such second decision; without any additional charge to the appellant for the established institution fee, if this fee shall have been already paid by him upon the original appeal.

missioner, or his register, for further investigation and decision; or for trial *de novo*.

Subject to appeal from the second decision without institution fee, if before paid.

In consideration of the state of landed property in the district of Chittagong, distributed, for the most part, amongst numerous petty proprietors, between whom and their tenants so many disputes continually arose regarding the property or boundaries of their respective tenures, that the unremitting attention of the zillah judge, and his register, were found insufficient to bring them to an early decision; the judge of that district was authorized, by Regulation XVIII, 1797, to refer to any of the native commissioners, acting under him in the capacity of referee, suits for landed property, the annual produce of which, if malgoozary, should not exceed fifty sicca rupees; or if lakheraj, the produce of which should not exceed five sicca rupees per annum. The persons to whom such causes may be referred, are to receive a separate sunnud, as commissioners of land suits; and are to be guided by the general rules enacted for the guidance of native commissioners appointed aumeens or referees. It is further provided, that in all cases of inheritance of, or succession to, landed property; the Mahomedan law with respect to Mahomedans, and the Hindoo law with regard to Hindoos, shall regulate their decisions; and the commissioners, in all such cases, are to obtain an exposition of the law from the law officers of the zillah court. They are also to affix, in some conspicuous part of their cucherries (court-rooms) a notification of the suit preferred, with a requisition to all persons

Preamble to Regulation XVIII, 1797. Special regulation for the appointment of commissioners of land suits in zillah Chittagong; and for referring to them suits for landed property not producing more than fifty rupees per annum, if malgoozary; or five rupees, if lakheraj.

Rule to be observed by such commissioners, in all cases of inheritance or succession.

Decisions to be enforced by zillah court; and appeal to it open in all cases.

persons who have any claim to the property sued for, to prefer the same within a limited period; and their decisions are to include all claimants to the property in dispute, who, according to the law of the parties, have a just and legal title to share therein. But the commissioners of land suits are to report all decisions passed by them, to be enforced by the zillah court, as in suits for personal property, and an appeal is, in every case, equally open to the judge.

Court of fudder dewanny adawlut empowered to appoint a head native commissioner, with extended powers, in any zillah, or city, where it may be requisite.

In addition to the native commissioners above mentioned, the court of fudder dewanny adawlut are empowered by Section IX, Regulation XLIX, 1803, (and Section XXVI, Regulation XVI, 1803, for the ceded provinces,) to authorize the appointment of a head native commissioner, in any city or zillah, wherein such appointment may, on representation from the judge, or otherwise, appear to the court advisable, for the trial of any suits referred to him, by the zillah or city judge, for personal property not exceeding in amount or value one hundred sicca rupees; or for the property or possession of land, the annual produce of which, if malgoozary, may not be above one hundred sicca rupees; or more than ten sicca rupees, if lakheraj; or for any other description of real property, the computed value of which may not exceed one hundred sicca rupees. Such head commissioners are to be nominated, for the approbation of the fudder dewanny adawlut, by the zillah and city judges; who are required to be particularly careful in selecting persons of good character and known ability, as well as duly qualified by their education and past employments, to discharge satisfactorily the trust reposed in them. They are to receive sunnuds of appointment under the seal and signature of the judge in whose jurisdiction they may be appointed to act, and are not to be removed from office without sufficient cause proved to the satisfaction of the fudder dewanny adawlut. The commissioners so appointed have the denomination of fudder aumeen, or head referee; are directed

By whom to be nominated, approved, and removed; and what persons to be selected for the office of head commissioner.

To be denominated "fudder aumeen," or

rected to hold their cucherries at the stations where the zillah or city courts are held; and are required to observe the general rules enacted for the guidance of other native commissioners acting in the capacity of referees; as well as the special rules prescribed for the commissioners of land suits in zillah Chittagong; except that all causes, referred to a head native commissioner, are to be pleaded by the parties in person, or by an authorized vakeel of the zillah or city court; and that the usual process for summoning and taking security from defendants, as well as for causing the attendance of any witnesses who may not attend before the head commissioner at the requisition of the parties, in common with all other process which it may be necessary to issue relative to any cause referred to, or decided by, a head native commissioner, is to be issued under the seal of the zillah or city court, to which the commissioner may be attached; and under the official signature of the judge, register, or assistant to the register of such court. It will be sufficient to add that the whole of the native commissioners described are liable to prosecution, in the dewanny adawlut, for corruption in the discharge of their trusts; as well as for any oppressive and unwarranted act of authority. Upon proof of the charge to the satisfaction of the judge, he is directed to give judgment against the offender for three times the amount or value, of the money or property corruptly received; with all costs of suit; or in other cases of oppression, to award such damages and costs to the party injured, as may appear to him equitable. But no commissioner is liable to be prosecuted for want of form, or for error, in his proceeding or judgment. Nor is any process to be issued against a commissioner charged with corruption, or oppression, unless the judge shall be previ-

head referee, and to hold their cucherries at the station of the zillah or city court. By what rules to be guided.

By whom causes referred to them to be pleaded.

And in what manner all processes, relative to such causes, to be issued.

All native commissioners liable to a civil prosecution for corruption, or any oppressive, and unwarranted act.

Judgment to be given on proof, in such cases.

But no commissioner to be prosecuted for want of form, or for error. Nor process to be issued, on charges of corruption or op-

pression, without ground to believe them well grounded.

R. XLIX, 1803.
Preamble and §
II, III, IV.
Provision for
the occasional
appointment of
assistant judges.

ously satisfied, by sufficient evidence, that there is ground to believe the charge to be well founded *.

THE number of civil causes depending before the judges of some of the zillah and city courts having become so considerable, that great delay must have occurred in the investigation or decision of them, and of other causes which might be instituted previously to their determination, unless some provision were made to expedite the trial of them; and the accumulation of such causes having chiefly proceeded from

* There has not yet been sufficient experience, under the provisions made by Regulation XLIX, 1803, for the new arrangement of native commissioners empowered to act as munsiffs; and for the appointment of head native commissioners, where required; to form a decisive judgment upon the utility of this subordinate judicial establishment. All powers entrusted to the natives, especially without fixed and liberal allowances, are liable to abuse; and it cannot be doubted that the native commissioners have, in some instances, perverted to purposes of self-interest, exaction, and oppression, the authority delegated to them for the more speedy and efficient administration of justice. But as far as an opinion can be formed, from the proportion of appeals against their decisions, to the total number of causes decided by them, in past years, their appointment appears to have been, in general, of considerable public advantage; and the following enumeration of suits actually decreed or dismissed by them, or adjusted before them by agreements (razeenamahs) of the parties, in the provinces of Bengal, Bahar, Orissa, and Benares, taken from official reports transmitted to the court of sudder dewanny adawlut, will shew the absolute impossibility of providing for the trial and decision of the numerous cases of litigation, which occur in these extensive and populous provinces, without the aid of some description of inferior judicatures under native superintendence.

In the year 1797,	Decreed or Dismissed	1,26,766,	Adjusted by parties	1,33,048,
1798,	ditto ditto	1,63,540,	ditto -	1,75,182,
1799,	ditto ditto	1,61,413,	ditto -	1,48,293,
1800,	ditto ditto	1,72,284,	ditto -	1,66,042,
1801,	ditto ditto	1,83,422,	ditto -	1,84,811,

The number of causes decided on trial, or dismissed on default, by the zillah and city judges, and their registers; or adjusted before them on razeenamahs; during the same period, was as follows:

BY THE JUDGES.

In the year 1797,	Decreed or Dismissed	12,674,	Adjusted by parties	2187,
1798,	ditto ditto	10,670,	ditto -	1121,
1799,	ditto ditto	10,705,	ditto -	1167,
1800,	ditto ditto	8261,	ditto -	1459,
1801,	ditto ditto	7443,	ditto -	1148,

BY THE REGISTERS.

In the year 1797,	Decreed or Dismissed	17,682,	Adjusted by parties	6087,
1798,	ditto ditto	19,946,	ditto -	3698,
1799,	ditto ditto	14,644,	ditto -	2590,
1800,	ditto ditto	15,217,	ditto -	3128,
1801,	ditto ditto	12,304,	ditto -	2341,

accidental

accidental circumstances, the effect of which might be removed by a temporary arrangement, for the trial and decision of the causes in arrear; without a permanent alteration of the established jurisdictions; it was deemed expedient that provision should be made for the occasional appointment of an assistant judge, to assist in the trial and decision of causes depending before the judge of any zillah or city court in which such an appointment might at any time be required. It was accordingly provided by Regulation XLIX, 1803, that "when the number of civil causes depending before the judge of any zillah or city court may be such as to require the aid and appointment of an assistant judge, for the speedy investigation and decision of such causes, the Governor General in Council, at the recommendation of the court of sudder dewanny adawlut, or otherwise, if it shall appear to him expedient, will appoint an assistant judge for the zillah or city, wherein it may be requisite; to be denominated, "assistant judge of the dewanny adawlut;" who, previously to entering upon the execution of the duties of his office, shall take and subscribe the same oath as is directed to be taken and subscribed by the judges of the zillah and city courts." The assistant judges so appointed are empowered to try and decide, according to the regulations in force for the administration of civil justice, any depending causes that may be referred to them by the judge of the zillah or city in which they may be appointed to officiate. The judges of the zillahs and cities, wherein assistant judges may be appointed, are authorized to refer to them, from time to time, during the continuance of such special appointments, any causes depending in their respective courts; whether original suits, or appeals from the decisions of their registers, or of the native commissioners. The selection of the particular causes to be so referred is left to the discretion of the judge; but he is to be guided, as far as circumstances may admit, by the general rule which directs, with certain exceptions, that

depending

Denomination;
and oath to be
taken by them.

What causes
may be tried
and decided by
them.

Rule for re-
ference of de-
pending causes
to them, living

Court of the
assistant judge
where to be
held.

What pleaders
to attend it.

And what law
officers to ex-
pound the Hin-
doo or Maho-
medan law.

Process how to
be issued and
executed.

And penalties
for resistance to
it.

Assistant judges
to be guided by
the rules pre-
scribed for the
trial of causes in
the zillah and
city courts.
And their de-
cisions to be
final, or ap-
pealable, as if
passed by the
judges of those
courts.

General obser-
vations on the
foregoing pro-
visions, for ad-
ministering
civil justice in
the first in-
stance.

depending causes be brought on for trial according to the order in which they are filed. The assistant judges are to try the suits referred to them in open court, to be held in the court house of the zillah or city dewanny adawlut, or in some convenient place adjacent thereto. The judge is to allot a sufficient number of the established pleaders to attend the court of the assistant judge; and the Mahomedan and Hindoo law officers of the zillah or city court are to expound the law in every case before him, wherein it may be requisite. All process, in suits referred to an assistant judge, is to be issued under his signature, and the seal of the zillah and city court; the officers of which are to execute it in like manner as similar processes are issued in causes tried by the judge; and it is to be considered of the same force and validity, incurring the same penalties for disobedience or resistance, as process signed by the judge. In the trial of all causes referred to him, the assistant judge is to be guided by the same rules as are prescribed for the trial of the same causes before the judges of the zillah and city courts; and his decisions are to be held final, or appealable to the provincial court of appeal, according as the cause would, or would not, have been appealable to the provincial court, if it had been decided by the judge of the zillah or city court.

WHAT causes are so appealable, will be specified after stating the general constitution of the provincial courts. But in concluding the foregoing imperfect recital of the provisions made by the existing Regulations, for the administration of civil justice in the first instance, it is impossible to withhold the acknowledgement due to the benevolence, equity, and policy, which have dictated them; with such evident attention to the interests of humanity; the rights, laws, and prejudices of the people inhabiting this portion of the British Empire; and the surest, as well as the most honorable, means of maintaining that empire in India, by establishing it upon the

the solid foundations of justice, protection, and conciliation. In the simplicity of the form of action allowed in all cases, varying only as regular or summary, except in the mode of commencing a suit against Government; as well as in the general tenor of the rules prescribed for the pleading, trial, and decision, of every suit cognizable by the civil courts, and determinable either by specific law, or on principles of reason and equity; the intelligent regard shewn to local circumstances affecting the judicial officers, as well as the suiters, and their pleaders, is equally conspicuous. If, notwithstanding the number of civil courts which have been established; the permanent means afforded for the speedy investigation and decision of inconsiderable causes, by the establishments of native commissioners; as well as in suits to a larger amount, by the extended reference now authorized to the registers of the zillah and city courts; and the occasional aid provided for, to expedite, when necessary, the whole of the causes depending in those courts, by the appointment of assistant judges; it should still be found that the laws are not, in any instance, administered with that promptness, certainty, and facility, which are requisite to ensure their full beneficial effect; it cannot be doubted that experience will suggest further remedies to supply this radical defect; and that such measures as may be practicable, expedient, and sufficient for this purpose, will be adopted. If any thing be wanting to secure the integrity of the native commissioners, who now receive no fixed salary, but are allowed the institution fee, of one anna per rupee, in all causes decided by them upon an investigation of the merits, or adjusted before them by the agreement of parties; it may also be confidently presumed that so essential a requisite to the purity, impartiality and consequent utility, of every judicial establishment, which has been so wisely and liberally granted to the present European courts of judicature, will not be denied to those under native superintendents. These observations, however, are not so much intended to apply to any known abuses of a general, or important nature,

in

in the subsisting inferior courts of civil justice; or to any defects now unprovided for in the superior courts; as to obviate the force of the only objections which have been, or can be, offered to the adequacy and efficiency of the judicatures actually established, in accomplishing the just and humane design of their institution; and of the rules which have been framed for their guidance.

R. V, 1793.
R. IX, 1795.
R. IX, 1803.
General reasons
for the establish-
ment of courts
of appeal.

And utility of
such courts,
provided they
are not attended
with excessive
delay or ex-
pense.

Facility of ac-
cess and dispatch
necessary to ren-
der them effi-
cient.

Courts of appeal
subsisting before
1793, in what
respects defec-
tive.

To provide against the possibility of unjust or erroneous decisions in courts of primary jurisdiction; as well as to secure a strict regularity of proceeding in all such courts, by rendering their judgments and the grounds of them, the evidence taken, and every act done or ordered upon the original trial, subject to the inspection and revision of a superior authority; it has been deemed expedient, in all countries where a system of legal administration has been introduced, to constitute courts of appeal, or review, with powers more or less extensive, according to the objects intended by them. The public utility of such superior courts, in rectifying error, maintaining regularity, and enforcing duty, is obvious; and provided the course of justice be not too much delayed, or made too expensive by appeals, the admission of them, within a limited period, must essentially conduce to the perfection of every judicial establishment. To render them efficient however, as well as to prevent their being perverted from their just object, to purposes of procrastination, litigiousness, and oppression; it is necessary that they should be easy of access to all persons who may have occasion to resort to them; and that the appeals preferred to them should be investigated and decided with dispatch. But previously to the year 1793, the only courts of appeal under this presidency were at Calcutta. In suits regarding rent or revenue, which were excluded from the jurisdiction of the dewanny adawluts, and cognizable in the first instance by the collectors, the appeal, (as already noticed,) lay to the Board of Revenue; and ultimately to the Governor General in Council. In causes decided by the
courts

courts of mofussil dewanny adawlut, parties who considered themselves aggrieved by the decisions of those courts, had no tribunal to which they could apply for redress except the fudder dewanny adawlut. This court being composed of the Governor General and Members of the Supreme Council, it was found requisite, with a view to prevent a greater number of appeals than the general administration of public affairs would allow of being heard, to restrict the admission of appeals to cases in which the decisions of the mofussil courts might be for an amount or value exceeding one thousand sicca rupees; or for lands the annual produce of which might be more than that sum, if assessed for the public revenue; or more than one hundred rupees, if exempt from the payment of revenue*. Under this limitation the greater part of the suits determined in the mofussil courts, (including the whole of those instituted by the lower classes of the people) were not appealable; and in suits that were appealable, persons residing in the interior parts of the country, whose occupations prevented their personal attendance in Calcutta, and whose circumstances would not admit of their entertaining a vakeel, at an unlimited expense, for the purpose of prosecuting an appeal, were often precluded, by the distance of their situation, from appealing against decisions with which they were dissatisfied. In addition to this impediment, arising from the local situation of the fudder dewanny adawlut, unavoidable delay, in hearing and determining the appeals preferred to that court, was frequently occasioned by interruptions to the regular sittings of the court; from the avocations of the Members of Government who composed it.

* Supposing the land-tax to be nine-tenths of the neat rent produce; at which rate it was formerly computed, when the assessment was fixed upon the ascertained or estimated annual rent, deducting the actual charges of collection, and *Malikanah* (the proprietor's income) at ten per cent; a neat product of one hundred rupees, from lands paying no tax, was valued as equal to a product of one thousand rupees from taxable lands. But when the proprietor's allowance was calculated at ten per cent upon the neat revenue paid to government, and not upon the rent; as was done when the lands were let in farm by Government and the farmer stipulated to pay the malikanah, distinctly from the public revenue; or when the rents were collected khas by the public officers, and the proprietor received ten rupees for every hundred, clear of charges and malikanah, carried to the account of Government; the proportion received by the latter, of the aggregate payments for tax and income, was 100 rupees of 110, or ten-elevenths.

Provincial
courts of appeal
established, to
remedy the de-
fects stated, for
Bengal, Bahar,
and Orissa.

Constitution of
these courts.

Provincial court
for Benares.

And for ceded
provinces.

To remedy these material defects; and, as stated in the preamble to Regulation V, 1793, "the jurisdiction of the courts of dewanny adawlut established in the several zillahs, and the cities of Patna, Dacca, and Moorshedabad, being extended, not only to the causes which were cognizable in the courts of mál adawlut, but to civil suits of all descriptions between individuals; and under certain restrictions between Government and its subjects; and it being essential to the prosperity of the country, that all persons, especially the cultivators of the soil, the traders and manufacturers, and the other classes of the lower and most industrious orders of the community, in the different parts of the provinces, who may be dissatisfied with the decisions of those courts, should have an appeal to a higher, court; to which they can have ready access; and that this court should be so constituted, that they may look up to it with confidence for speedy redress against unjust or erroneous decisions;" the Governor General in Council resolved, and enacted by Section II of the above Regulation, that four courts of appeal should be established; one in the vicinity of Calcutta, and one at the cities of Dacca, Moorshedabad, and Patna, respectively. Each court to be superintended by three judges; to be styled the first, second, and third, judge of the court, to which they may be appointed; and previously to entering upon the execution of their duties, to take and subscribe an oath, of the same tenor with that prescribed to be taken by the judges of the zillah and city courts. Three law officers, (a cauzee, mooftee, and pundit) with a register, and an establishment of ministerial officers, were also attached to each court. A fifth court of appeal, constituted in like manner, for the province of Benares, was established by Regulation IX, 1795. And a sixth court, for the ceded provinces, has been instituted by Regulation IV, 1803. The designation of this court, which was originally denominated "the provincial court of appeal for the division of the provinces ceded by the Nuwab Vizeer," has been altered, under Regulation

lation IX, 1804, in consequence of the annexation of the territories ceded by DOULUT RAO SENDHEEAH, to that of "the provincial court of appeal for the division of Bareilly;" at which place the court is held. By the same regulation, the territory in Boondelkhund, ceded, by the PESHWA, is added to the jurisdiction of the Benares court. And by Regulation VIII, 1804, the zillahs of Allahabad and Gorukhpoor, in consequence of their being more contiguous to Benares, than to Bareilly, have been transferred from the jurisdiction of the provincial court for the division of Bareilly, to that of Benares; with a proviso that the courts of justice, and other public authorities, shall be guided in their decisions, and proceedings, in all matters relating to those zillahs, by the Regulations which have been, or shall be enacted, in conformity to Regulation I, 1803, for the internal government of the provinces ceded by the Nuwab Vizeer.

Annexations to the Benares division.

With proviso to maintain the regulations enacted for the annexed districts.

THE particular zillahs and cities, included within the jurisdiction of the six provincial courts of appeal, are specified in the Regulations above mentioned; which further direct, that each court be held in a large convenient room, three days in every week, or oftener if the business shall require it; and that no rule, order, proceeding, or decree, shall be made, but on court days, and in open court. Two judges are required to hold a court of appeal; and no decree is valid unless passed by two judges present in court; who are to sign the decree passed by them. When a difference of opinion may arise, the opinion of the majority is to determine; or, if there be only two judges in court, the senior has a casting vote; except in cases wherein the decision of the provincial court is final; in which the senior judge has a casting voice, provided his sentiments go to affirm the decree of the inferior court; but if the senior judge declare his opinion, in opposition to the other judge present, that the decree of the inferior court should be reversed, or altered, the suits, on which

R. XLVII, 1793, extended to Benares by R. XXV, 1795. R. VII, 1794, § XII, extended to Benares by R. XVI, 1795, § XV. R. III, 1797, § VII. R. XV, 1803. General rules for provincial courts; and powers of the judges.

Authority of senior judge, or officiating superintendent of the court, when two judges are not present.

Provision for an occasional second court of appeal in the Dacca division.

which such difference of opinion may exist, are to stand over for judgment until the absent judge shall attend; when they are to be decided by the majority of voices. The senior judge, (who does not proceed on the circuit of jail-delivery, but is fixed at the station of the court of appeal, for the purpose of superintending the business of that court, and forming a court of appeal with one of the other judges) is further empowered, in the eventual absence of both the other judges, to receive petitions of appeal; execute decrees and orders; summon and examine witnesses; and generally, to transact the current business of the court: but is restricted, in such cases, from admitting or rejecting any appeal which may be preferred after the prescribed period; as well as from passing a decision on any depending cause; and from altering any order which may have been passed by two or more judges of the court. This limited authority, for the currency of business, must also be considered to be equally vested in the second, or third judge of a provincial court, if at any time the only judge present; and consequently the officiating superintendent of the court. A fourth judge of appeal and circuit has been appointed for the Dacca division, in consequence of its extensive jurisdiction, and the interruption experienced in holding the court of appeal for this division, from two of the judges being often employed, at the same time, on the zillah and city jail deliveries. In consequence of an accumulation of appeals from this interruption, provision has likewise been made by Regulation IV, 1802, for constituting an occasional second court of appeal in that division, to consist of the second and third judges; when the whole of the four judges may be on the spot. But the object of this regulation being to provide for a speedy decision of the causes in arrear, the operation of it is to cease whenever this end shall appear to the sudder dewanny adawlut to have been sufficiently accomplished.

UNDER

UNDER the original regulations of 1793, an appeal was allowed, in all cases, from the decisions of the zillah and city courts to the provincial courts of appeal. But to prevent the time of the latter from being occupied by petty causes, it was afterwards judged expedient (by Regulation VIII, 1794,) to vest the zillah and city judges with a final power of decision, in suits for money or personal property not exceeding in amount or value twenty-five ficca rupees; and by Regulation XXXVI, 1795, their decrees were declared final in appeals from decisions for money or personal property, passed by their registers under Regulation VIII, 1794; or the native commissioners appointed under Regulation XL, 1793. These provisions for Bengal, Bahar, and Orissa, were extended to the province of Benares, by Regulation LIV, 1795. But by Regulation XLIX, 1803, they are rescinded for the whole of those provinces, with respect to appeals from decisions of the register; and the following rules are substituted for all decrees which may be passed, by the judges of the zillah and city courts, in appeals from decisions of their registers, whether for money or other personal property; or for real property. “ If
 “ the suit be for personal property, or for any description of
 “ real property not being malgoozary or lakheraj land, and the
 “ amount or value adjudged or disallowed by the decree of
 “ the judge shall not exceed one hundred ficca rupees; or, if
 “ the suit be for land, and the judgment be for, or against, a
 “ claim to malgoozarry land, the annual produce of which
 “ (as defined in Section III, Regulation IV, 1793,) may not
 “ exceed one hundred ficca rupees; or lakheraj land, the
 “ annual produce of which may not be above ten ficca ru-
 “ pees; or although the decree of the judge be for, or against,
 “ claims to personal or real property exceeding the amount,
 “ value, or produce, above specified, if the suit be within the
 “ limitation of causes referable to the register, and the decree
 “ of the judge shall confirm the decision of the register; the
 “ determination of the judge shall be final; unless the pro-
 “ vincial

R. III, 1793,
 § XX.
 R. V, 1793, §
 XII.
 General appeal
 to the provincial
 courts, allowed
 by the regulati-
 ons of 1793.
 R. VIII, 1794,
 § VI, and XI.
 Limited, in
 certain cases, by
 subsequent re-
 gulations.

R. XXXVI,
 1795, § IV.

R. LIV, 1795.
 R. XLIX, 1803,
 § VIII.
 Limitation of
 appeals fixed by
 regulations now
 in force, in Ben-
 gal, Bahar, Oris-
 sa, and Benares.

In what cases an
 appeal lies to
 the provincial
 courts, from
 decrees of the
 zillah and city
 judges, passed
 on appeals from
 decisions of
 their registers.

“ provincial court of appeal deem it proper to admit a special
 “ appeal to that court, under the discretion given by Section
 “ XXIV, of this regulation. If the judge’s decree reverse or
 “ alter the register’s decision, and the amount or value adjudg-
 “ ed or disallowed by the decree of the judge, exceed one hun-
 “ dred ficca rupees; or if the judgment so passed in opposition
 “ to, or variation from, that of the register, be for or against
 “ a claim to malguzary land, the annual produce of which
 “ may exceed one hundred ficca rupees; or lakheraj land,
 “ the annual produce of which may be above ten ficca rupees;
 “ a further appeal shall lie to the provincial court of appeal,
 “ under the prescribed rules for appeals to that court.” By the
 same regulation the decrees of the zillah and city judges, which
 were before final in appeals from decisions of the native com-
 missioners, for money or other personal property, are also de-
 clared final in appeals from decisions, passed by the head na-
 tive commissioners, for personal or real property, not exceed-
 ing the limitation of causes referable to them; as well as in
 appeals from decisions of the commissioners of land suits in
 zillah Chittagong, in causes referable to such commissioners;
 provided that the provincial court may, in any particular case,
 admit a special appeal, if it shall appear to them proper, in the
 exercise of the discretion hereafter mentioned. But as, under
 the authority vested in the judges of the zillah and city courts,
 to refer all causes for personal property not exceeding fifty
 rupees, to any of the native commissioners appointed under
 them, as well as to refer all suits for personal property, not ex-
 ceeding one hundred rupees, to the head native commissioners,
 or to their registers, it is probable that no causes of this de-
 scription will be tried by themselves in the first instance; un-
 less from the nature of the suit, as involving some general
 question, or otherwise, it should appear to be of importance,
 although the sum directly at issue be of inconsiderable amount;
 and in such cases it is desirable that an appeal from their deter-
 mination should be open to the provincial court; such part of

R. XLIX,
 1803, § XXII.
 Decrees of zil-
 lah and city
 judges declared
 final on appeals
 from decisions
 of the native
 commissioners.

R. XLIX,
 1803, § XXIII.
 But an appeal
 open to the
 provincial
 courts in all
 causes tried and
 decided by the
 zillah or city
 judges in the
 first instance.

Regulation VIII, 1794, as declared the decision of the judge to be final, in suits tried by himself in the first instance, for money or personal property, not exceeding twenty-five rupees, was rescinded; and an appeal now lies to the provincial courts of appeal, in Bengal, Bahar, Orissa, and Benares, in all causes whatever, that may be tried by the judges of the zillah and city courts in the first instance, viz. without a previous trial and decision by their registers; or by any of the native commissioners. This rule however has not yet been extended to the ceded provinces, in which the appeal to the provincial court (except in cases of default, provided for by the twelfth clause of Section XII, Regulation IV, 1803, and by Section XI, Regulation II, 1805,) is restricted by Section XXI, Regulation II, 1803, to causes in which the decree of the zillah court may be for landed property, the annual produce of which shall exceed two hundred sicca rupees, if malgoozary, or twenty rupees if lakheraj; or for money, personal property, or any other description of real property, the amount or value of which shall exceed two hundred sicca rupees.

This rule not yet extended to ceded provinces.

Limitation of appeals to the provincial court in these provinces.

THE provincial courts, in general, are however authorized to receive appeals, whatever may be the amount or value at issue, in all cases wherein the judges of the zillah or city courts may have refused to admit an appeal from the decisions of their registers, or of the native commissioners, on any ground of delay, informality, or other default in preferring it; or, after having admitted the appeal, may dismiss it on the ground of some default, without investigation of the merits of the cause; as well as in all cases wherein the judges of the zillah and city courts may refuse to admit, hear, and determine, an original suit preferred to them, on the ground of delay, informality, or other default, in preferring it; or having admitted the suit, may dismiss it on the ground of some default, without an investigation of the merits of the case. A summary proceeding only is directed to be held on such appeals;

R. II, 1801, § IX.
R. IV, 1803, § XII.
R. XLIX, 1803, § XXVI.
R. II, 1805, § XI.
Cases of default in which an appeal lies to all the provincial courts, whatever may be the cause of action.

Rule of proceeding in such cases.

appeals ; and if it appear to the provincial court that the original suit in, or appeal to, the zillah or city court, was rejected or dismissed on insufficient grounds, it may order the zillah or city judge to receive the same ; or to revive it if received and dismissed ; and to try and determine the cause upon its merits, according to the regulations. If, however, such appeals shall, on enquiry, be found groundless and litigious, the provincial courts are directed to punish the appellant by a fine to government proportionate to the condition of the party and circumstances of the case. It is also provided by Section XXIV, Regulation XLIX, 1803 ; (which may be considered to have been virtually extended to the ceded provinces by Section X, Regulation II, 1805,) that “ in all cases wherein a regular appeal may not lie to the provincial courts from the decrees of the judges of the zillah and city courts, it shall be competent to the provincial court to admit a special appeal, (on performance of the general conditions of appeals) if on the face of the decree of the zillah or city judge, or from any information before the provincial court, it shall appear to them erroneous, or unjust ; or if from the nature of the cause, as stated in the decree, or otherwise, it shall appear to them of sufficient importance to merit a further investigation in appeal. But this discretionary authority, vested in the provincial courts for the correction of erroneous judgments, in particular cases, is directed to be used with caution ; and is declared not to intitle any party to demand, of right, an appeal to the provincial court, in cases wherein the judgments of the zillah and city courts are provisionally made final. To obviate considerable delay in the determination of appeals from decisions of the native commissioners, and registers, when the zillah or city judge may be absent from his station, or, from whatever cause, there may be no judge, or person authorized to officiate as such, on the spot ; as well as when the register may be authorized to officiate as judge, and is consequently restricted from

R. XLIX,
1803, § XXIV.
Discretion vested in provincial courts to admit a special appeal, in all cases wherein a regular appeal may not lie to them.

Caution to be observed in the exercise of this discretion.

R. II, 1805, § XIV.
In what cases provincial courts may remove, to those courts, appeals depending in the zillah or city courts.

from hearing any appeals from judgments passed by himself as register; the provincial courts are further empowered, (by the third clause of Section XIV, Regulation II, 1805) in all such cases, upon representation by either of the parties, to remove the appeal from the zillah or city court in which it may be depending; and to proceed thereupon as in other appeals before the provincial court.

THE stated limitation of appeals to the provincial courts is subject to a further restriction, with respect to the summary processes authorized by the regulations, in cases of forcible dispossession, or arrears of rent. The judgments given by the zillah and city courts in such processes being subsidiary to a regular suit in those courts, no appeal from them to the provincial courts is admissible, unless the ground of appeal be the irrelevancy of the regulations, which authorize a summary process, to the case appealed. After receiving the appeal, the provincial court are to dismiss it, with costs, if the stated ground of irrelevancy shall not appear established; or, if the regulations referred to appear inapplicable to the case, they are to reverse the irregular judgment given by the zillah or city court; and to pass such order thereupon as they may think just and proper. But it is provided that the above restriction shall not be understood to preclude the regular appeal, in cases wherein land or crops may be adjudged by the zillah or city courts to be forfeited to government, under the penalties already mentioned for employing an armed force to take or keep possession of disputed property. The vakeel of government is to sue for such forfeitures in the dewanny adawlut; and the judgment passed thereupon is subject to the general rules for appeals, as well as to the particular provisions respecting judgments of forfeiture in cases of resistance to the process of the zillah and city courts.

It being a general rule for the trial and determination of all

R. V, 1798,
§ VII.
R. VII, 1799,
§ XVIII.
R. XXVIII,
1803, § XXXV.
Restriction of
appeals from
judgments on
summary pro-
cess, in cases of
forcible dispos-
session, or ar-
rears of rent.

Admissible up-
on irrelevancy
of the regulati-
ons only.

But this restric-
tion not meant
to preclude a
regular appeal
in cases of for-
feiture to go-
vernment, for
employing an
armed force.

Such forfeitures
how to be sued
for.

R. V, 1798,
§ XI.

R. IV, 1803,
§ XI.
General rule of
proceeding for
the provincial
courts.
To be guided
by the rules pre-
scribed for the
zillah and city
courts.

all suits and appeals before the provincial courts, that they are to proceed, except as to hearing witnesses and receiving evidence, “ in the same manner and with like powers and authority, and subject to the same restrictions, limitations, and exceptions, as are prescribed to the zillah and city courts;” it will be sufficient to notice the principal additional rules, which have been enacted for receiving, trying and deciding, appeals to, or other matters cognizable by, the provincial courts.

R. V, 1793,
§ XII.
R. XII, 1797,
§ IV.
R. IV, 1803,
§ XII.
R. II, 1805,
§ XII.
Petitions of ap-
peal, what to
contain, and
where to be pre-
sented.

IN all cases appealable, under the regulations, to the provincial courts, the petition of appeal, stating particulars of the decree appealed against, and assigning some cause, special or general, for appealing from it, was originally allowed to be presented either to the court in which the decree had been passed; or to the court of appeal. But this option having been found productive of delay in the admission of appeals, from the necessity of frequent references for information, it was revoked by Regulation XII, 1797; and all persons desirous of appealing to the provincial courts, or to the sudder dewanny adawlut, were required to present their petitions of appeal, in the first instance, to the court wherein the decree appealed against might have been passed; which court, in the event of its rejecting the petition, on whatever ground, was directed to furnish a copy of its order of rejection to the appellant; who was declared at liberty to present his petition of appeal, with such order, or a declaration that it was applied for, and not obtained, to the provincial court or sudder dewanny adawlut. The absolute revocation of the option first given having produced inconvenience and hardship, however, in particular cases, wherein the parties were not fully advised of the rules referred to, it has been recently provided, by Section XII, Regulation II, 1805, “ that the court of sudder dewanny adawlut and the several provincial courts of appeal may, in any particular case, if they

“ see

“ see reason for so doing, receive and admit petitions of ap-
 “ peal in cases appealable to them under the regulations;
 “ instead of requiring the appellant to present his petition
 “ of appeal, in the first instance, to the court in which the
 “ judgment appealed from may have been passed.” It is also
 provided by Section XXIV, Regulation XLIX, 1803, and Sec-
 tion X, Regulation II, 1805, that any petitions for the special ap-
 peal authorized by those sections are to be presented to the
 provincial courts and sudder dewanny adawlut respectively.
 The petition of appeal, (wherever it may be presented) is to
 be accompanied, in all cases, with an attested copy of the
 decree appealed from, or a written declaration that such
 copy was applied for ten days after the decision, and was
 denied. It must also be accompanied (if not preferred in
forma pauperis) with the prescribed institution fee; and with
 security for the payment of any costs that may be awarded on
 the appeal, including the fees of the appellant’s pleader, if
 he shall intend to employ one for prosecuting his appeal.
 The petition, fee, and security, are to be presented within
 three months * after the date on which a copy of the decree
 appealed from may have been delivered, or tendered in open
 court, to the appellant or his vakeel; and it is declared, that
 the presenting a petition of appeal before the expiration of
 the time limited, without the prescribed institution fee and
 security for costs, or proof of inability to furnish the same,
 (under the rules hereafter mentioned for paupers) shall not
 be considered to preserve the appellant’s right of appeal.
 But the court of appeal is, in all cases, authorized to admit
 the appeal after the expiration of the prescribed period, if the
 appellant can shew just and reasonable cause, to their satis-
 faction, for not having preferred it within the time limited; re-
 cording their reasons for admitting it in such cases. If the

R. XLIX, 1803,
 § XXIV.
 R. II, 1805,
 § X.
 Petitions for
 special appeals
 where to be
 presented.

What to accom-
 pany the peti-
 tion of appeal,
 in all cases.

R. VI, 1797,
 § VI, and VII.
 R. II, 1798,
 § IX, and X.
 R. IV, 1803,
 § XII.
 R. XLIX, 1803,
 § VI, and VII.

R. II, 1805,
 § VIII.
 Time limited
 for preferring
 appeals.

But courts of
 appeal may ad-
 mit them, after
 prescribed pe-
 riod, on suffi-
 cient cause.

* Three calendar months are specified in the regulations; and the sudder dewanny adawlut, in a case before that court on the 26th September 1797, declared their opinion that three months of the English calendar were intended, but as the regulations do not expressly state English months, and the appellants had preferred their appeal within three Bengal months, and pleaded ignorance of the English calendar; the court admitted their appeal.

appellant

R. V, 1793, § XII, and XIV.
R. XIII, 1796.
R. V, 1798, § III, to VI.
R. IV, 1803, § XII.

In what manner, and under what security, the execution of decrees may be stayed during appeals.

Provision to prevent an abuse of this rule.

Security to be taken from respondent, if the decree be executed.

Lands adjudged to be held in

appellant be desirous of staying the execution of the decree passed against him, during the trial of his appeal from it, he is further required to give good and sufficient security, in a sum equal to one year's produce of the property adjudged, if the decree be for land, or any description of real property; or, in other cases, in an amount equal to the sum or value decreed; for the performance of the decree which may be passed upon the appeal. If such security be given by the appellant at the time of preferring his appeal, or within a reasonable period to be fixed for the purpose, the court, in which the decree appealed from may have been passed, is to suspend the execution of it during the appeal; but to prevent an abuse of this rule, and encouragement of litigious appeals, the courts of appeal, in all cases wherein they may confirm the decree appealed from, are directed to adjudge interest at the rate of one per cent per mensem, on the amount receivable by the respondent under such decree, from the date of it; and are also authorized to punish appeals which may appear litigious by a proportionate fine to government *. If the appellant shall not give security for staying execution of the decree, and it shall consequently be put in force against him, notwithstanding his appeal; the prescribed security is to be taken from the respondent, in whose favor the decree is executed for the due performance of whatever judgment may be passed on the appeal. The decree is not to be put in execution, during an appeal, without such security †. But as cases may occur

* On the 21st February 1798, the sudder dewanny adawlut, upon a reference from the Calcutta provincial court, determined, that "if a party against whom a decree may be passed, and ordered to be put in execution, allow the execution thereof to take place, either wholly or in part, without preferring an appeal, and tendering the prescribed security for staying the execution of the decree, he should not afterwards be allowed to stay the execution." But it has been since ruled, that when the decree be for both land and money; and may have been enforced as far as respects the former only, when an appeal is preferred and security tendered; the execution of the pecuniary part of the judgment should be suspended during the appeal.

† Either party may object to the sufficiency of the security offered by the opposite party; and all objections against the responsibility of sureties claim consideration, as well as any requisite investigation, if made before the security has been admitted. But the court of sudder dewanny adawlut, in a case before it on the 27th March 1799, determined, that an objection not made at the time of admitting the security taken, and not founded upon subsequent circumstances, was inadmissible after the security had been received and approved.

wherein

wherein neither the appellant nor the respondent may be able to give the prescribed security, it is provided that, in such cases, the property adjudged, (viz. any landed property, the right or possession of which may be transferred by the judgment appealed from,) shall be held in attachment during the appeal, or until such time as one of the parties may be able to give the required security, by the collector of the district, wherein the land may be situated, at the expense of the party who may be ultimately declared entitled thereto. The courts of appeal are further authorized, when from delay in the decision upon appeals the security first given may appear insufficient, to require any additional security which they may deem necessary; and in default of its not being given within a reasonable period, to proceed in like manner as if no security had been given in the first instance. It may be added that any private transfer or mortgage of property included in a judgment appealed from, whilst the appeal is depending, is declared to be null and void, if the ultimate judgment shall be against the party who may have transferred or mortgaged the same during the appeal; and that provision is also made to secure the rights of respondents, as far as possible, in the event of any property adjudged to them, but left in the appellant's possession, being sold by government, whilst the appeal is pending, or before the final judgment be put in execution, to make good an arrear of the public assessment; for which all lands, by whomsoever possessed, are held answerable, in preference to any other claims thereupon*.

attachment by the collector, if neither party can give security, during the appeal.

In cases of delay, additional security may be required, if that first given appear insufficient.

R. V, 1798, § IV, and V.
R. IV, 1803, § XIV.

Private transfers and mortgages of adjudged property, during appeals, declared null and void.

And further provision made for securing, as far as possible, the rights of respondents in event of a public sale for arrears of assessment.

WHEN a petition of appeal and its required accompaniments

R. V, 1793, § XII, and XIV.

* The tax upon land is the indefeasible right of government, or rather of the public body represented by it; and cannot be affected by any private alienation or assignment. But in the case stated, it is provided, that if the land sold be purchased by the respondent, he shall be entitled, on a final judgment in his favor, to recover from the appellant his purchase money, and all expenses, with interest thereupon; or the purchase money and interest, if the land be publickly sold to any other person; or the land itself, with all the profits arising therefrom, if it be proved to have been directly or indirectly purchased by the appellant.

are

R. XII, 1797^a
§ III.

R. IV, 1803,
§ XII, and
XIII.

Zillah or city
court, how to
proceed, when
the cause is ap-
pealable, and
the petition of
appeal duly pre-
sented, with its
required accom-
paniments.

are delivered, within the prescribed period, to the zillah or city court; and the cause is clearly appealable to the provincial court; the judge receiving the petition of appeal is to transmit it (with a copy of the decree appealed from; an extract from his proceedings shewing the performance of the conditions of appeal; and information whether the decree has been put in execution, or otherwise;) to the provincial court; and is at the same time to cause notice in writing to be given to the appellant that, within fifteen days, the proceedings held in the cause will be certified to the provincial court; and that if he shall not proceed in the appeal within six weeks after the petition of appeal shall have been filed in the provincial court, his appeal will be dismissed; unless he shall shew reasonable cause, to the satisfaction of that court, for not having proceeded in it*. The judge is further directed, within fifteen days after the receipt of the appeal, to certify under his hand and official seal, to the register of the provincial court, the record duly made up and authenticated; including the original complaint, answer, replication and rejoinder; the depositions, exhibits, and every other original paper read in the cause: keeping attested copies thereof, as records of the zillah or city court. If any original paper cannot be transmitted, from having been entered in a book relating to other causes; or from its being lost or mislaid; an authenticated copy, or transcript of the entry, of such original paper, is to be certified to the provincial court. This rule however applies only to cases in which the appeal may have been regularly preferred to the zillah or city judge, within the prescribed period, and he may enter-

In what cases
the zillah or ci-
ty judge may
reject the peti-
tion of appeal;
furnishing the

* The prescribed written notification to the appellant must be given in all cases; although he may be verbally informed of the admission of his appeal; or may know it from his vakeel; and an omission of the notice required by the regulations will save the appellant from dismissal of his appeal for non-attendance to prosecute it. This was determined by the court of fudder dewanny adawlut in a case before it (KRISHN DUT, versus KAHAR SINGH) on the 6th July 1796.

tain no doubt that the cause is appealable under the regulations. If it appear to him not to be appealable, or if the petition of appeal be not delivered to him, as required, within the time limited, he may reject the petition; furnishing the party with a copy of his order of rejection; and wait instructions from the provincial court.* On receipt of the petition of appeal by the provincial court, (whether transmitted to it by the zillah or city judge, or presented to it by the appellant or his vakeel,) if the appeal be admitted, a summons is issued to the respondent, through the judge of the court in which the cause may have been tried; who is at the same time required to certify the record of the original trial, if the petition of appeal shall not have been received from him in the first instance. If the respondent is not to be found, or from whatever cause the summons cannot be served upon him, the judge is to proceed by proclamation, in the same manner as already stated with regard to defendants in the zillah and city courts, upon whom a summons cannot be served; and if, after such proclamation, the party shall not appear as required, either in person or by vakeel, the provincial court is to try and determine the cause *ex parte*, in the same manner as if the respondent had appeared.

party with a copy of his order of rejection.

R. V, 1793, § XV, and XVI.
R. IV, 1803, § XV, XVI, and XVII.
In what manner the provincial court proceeds on receiving a petition of appeal.

And process against respondents upon whom the summons cannot be served.

In what case the appeal to be tried *ex parte*.

THE provincial courts are empowered, in cases which may appear to them not to have been sufficiently investigated in the zillah or city court, or for any other cause that may be deemed reasonable by them, either to receive such further evidence as they may think necessary for the just determination of the suit, and give judgment thereupon; or to refer the suit back to the court in which it originated, with special directions to the judge regarding the new evidence he is to receive respecting it; as may be deemed by the court most conducive to justice and the convenience of the parties and

R. V, 1793, § XVIII, XIX and XX.
R. IV, 1803, § XVIII, XIX and XX.
Authority of the provincial courts in cases which may appear not to have been sufficiently investigated.

* This is not expressly stated in the regulations; but is clearly inferable from the rules prescribed.

witnesses;

Further evidence how to be taken, if received in the provincial court.

Powers of provincial courts the same as those of zillah and

witnesses; recording in every case their reasons for exercising the power thus vested in them.* If the provincial court judge it proper to receive further evidence themselves, they are authorized, either to examine the witnesses produced, *viva voce*, in open court; or to direct their register to take the depositions of the witnesses, in the presence of the appellant and respondent, or their vakeels; who are to be at liberty to put any questions they may think proper; and the examination, including such questions and the answers to them, is to be reduced into writing, signed by the deponents, and authenticated by the register. In dispensing with the oaths of particular witnesses, or examining them by commission; as well as

* In referring a suit back to a zillah or city court for further investigation, the provincial court may either direct the judge, after taking the further evidence required, to transmit it to the provincial court for their decision thereupon; as is usually done, for the purpose of expediting a final decision upon the case, when a judgment upon the merits may have been given in the original court; and some particular point only remains to be further investigated: or may instruct the zillah or city judge to pass a second decision upon the further evidence to be taken by him, subject to a second appeal to the provincial court; as authorized by the regulations, whenever the suit may have been dismissed on the original trial upon the ground of some default, without investigation of the merits of the case. If the suit have been irregularly instituted in the zillah or city court, as in the case of a suit against government, not instituted in the mode prescribed by Section XI, Regulation III, 1793, and consequently tried and determined without the communication to, and order from, the Governor General in Council, required by that section; the provincial court (as well as the sudder dewanny adawlut in similar cases) may nonsuit the Plaintiff, on the ground of such irregularity; and direct him to prefer his claim *de novo* in the manner prescribed by the regulations. But if the suit have been regularly preferred in the zillah or city court, the provincial courts are not authorized, upon an appeal from the original decision, or the sudder dewanny adawlut upon an appeal from the judgment of the provincial court, to direct that the plaintiff's claim be instituted *de novo*. This was determined by the court of sudder dewanny adawlut in the case of HURPURSHAD DOBEE versus BIRJBASHEEMUL, on the 7th September 1796. It may be useful to add that, in the case of Rajah MAHANUND appellant against GHOLAM SUFDUR, the former contested the authority upon which the latter commenced an action against him in the court of zillah Moorshedabad; and having appealed to the provincial court against an order of the zillah judge for admitting such authority, the sudder dewanny adawlut, upon a reference from the provincial court whether such interlocutory appeal were admissible, determined, on the 1st March 1798, that it should be admitted. The court, at the same time, expressed their concurrence in opinion with the provincial court, that "it is not, in general, necessary or proper to interfere with the processes of the zillah courts, respecting de- pending suits;" but remarked that "in particular cases, such as the present, wherein the defendant objects to the authority of the plaintiff to institute the suit against him, and when an appeal may be preferred against the decision passed in the zillah court upon such preliminary objection, an immediate and final decision thereupon, by the courts of appeal, is obviously desirable for all the parties concerned; and appears to the court consistent with the meaning and intention of the regulations, as conducive to the ends of justice."

in proceeding against any witness who may refuse to be sworn, or to give evidence, or to subscribe his deposition; or who may be guilty of wilful and corrupt perjury; and generally in all cases provided for by the rules before stated for the zillah and city courts; the same powers are vested in the provincial courts of appeal. The stated penalties, for resistance to any process of the zillah or city courts; are also extended to all similar resistance of any process, rule, order, or decree, which may be issued from a provincial court. The only further special provision relative to appeals to the provincial courts, which it appears requisite to notice, is that, if the appeal be preferred against a decision founded upon an award of arbitration, it is to be dismissed with costs, unless it be fully proved, by the oaths of two credible witnesses that the arbitrators have been guilty of gross corruption or partiality in the cause. It is however necessary to observe upon the rule contained in Section XXI, Regulation V, 1793; (and Section XXI, Regulation IV, 1803, for the ceded provinces,) whereby the provincial courts are authorized to dismiss an appeal which the appellant may not proceed in for six weeks, unless he shall shew reasonable cause for not proceeding in it; that the option which the plaintiffs in the zillah and city courts have, in cases of nonsuit, to institute a new suit, does not extend to appeals dismissed for non-prosecution or other default; which may indeed be revived, upon sufficient cause shewn to the satisfaction of a superior court of appeal; but cannot, under any existing regulation, be renewed by a second appeal in the same cause. The explanation given by the sudder dewanny adawlut to the zillah and city courts, (that before the judgment of nonsuit be passed, against a party neglecting for six weeks to perform any act required from him in the prosecution of the suit, he should be called upon to shew cause for not having proceeded in it) is therefore not only equally applicable to the nonsuit of appellants, for neglect in the prosecution of their appeals; but demands the most strict

city courts in dispensing with oaths, and other cases provided for by the regulations.

R. V, 1793, § XXIII, and XXVI.

R. IV, 1803, § XXIII, and XXVI.

Penalties for resisting process of provincial courts, the same as for resistance to process of the zillah and city courts.

R. V, 1793, § XXVIII.

R. IV, 1803, § XXVIII.

In cases of arbitration, appeal to be dismissed, with costs, unless the corruption or partiality of the arbitrators be proved.

R. V, 1793, § XXI.

R. IV, 1803, § XXI.

Remark upon power vested in the provincial courts to dismiss appeals not proceeded in for six weeks.

strict observance from every court of appeal, to obviate the injurious consequences that must ensue, if the party should not, by wilful neglect, have justly subjected himself to the penal dismissal of his appeal with costs.*

R. III, 1793, §
XIX.
R. V, 1793, §
IX.
R. III, 1803, §
XIX.
R. V, 1803, §
IX.

Prohibition of
correspond-
ence, by letter,
between pro-
vincial, zillah,
and city courts,
relative to de-
pending causes
or other judicial
matters, and
mode of com-
munication to
be observed by
them respec-
tively.

R. V. 1793, §
XV.
R. IV, 1803, §
XV,
Process to par-

It has already been remarked that the provincial courts, in common with the zillah and city courts, are prohibited from corresponding by letter with the parties in any suits, or matters, within their cognizance. They are also prohibited from corresponding by letter with each other, respecting any depending cause, or upon any matters on which they may not be specially empowered to correspond. When a zillah or city judge shall have occasion to communicate to a provincial court any information that may be required from him by the court; or which he may deem it necessary to submit respecting any cause or matter that may be before it; he is to certify it to the court by a writing under his official seal and signature. When a provincial court shall have occasion to issue an order to the judge of any zillah or city court, or to require information from him on the subject of any suit or matter before them, they are to issue a precept under the seal of the court, and the signature of their register, commanding him to execute the order, or requiring him to furnish the information, and the judge to whom the precept may be directed, is to perform the exigence of it, or return good and sufficient reason why he has not done it. All process to parties and witnesses, and every rule or order whatever, which may be issued by the provin-

* Appeals are frequently withdrawn, and the investigation of them discontinued, upon a compromise between the parties; who deliver to the court, in such cases, deeds of agreement and acquittance denominated *Rázeenámah*, and *Sáfeenámah*. An application to revive an appeal so discontinued, on the ground of the conditions, upon which the *Rázeenámah* had been granted by the appellant, not having been fulfilled by the respondent, was refused by the sudder dewanny adawlut, in the appeal of GUDADHUR MITR, versus MOORLEEDHUR MITR, on the 14th December 1796; as in this case, the appellant might have a new action against the respondent. But to save the expense and delay of a new suit; as well as to encourage the amicable adjustments of parties; whenever the deeds of agreement, on which an appeal may be withdrawn, specify distinctly the terms of compromise, it may be just and expedient to enforce them, as in execution of a decree of court.

cial courts, respecting cases depending before them, or the execution of decrees passed by them, is to be written or printed in the Persian and Bengal languages, in Bengal and Orissa; or in the Persian and Hindoostanee languages in the other provinces; to be sealed with the seal of the court; and signed by the register: all such process, rules, and orders, to be served or executed on any parties, witnesses, or other persons, not being in actual attendance on the provincial court, are to be directed to the judge of the zillah or city court, in which the cause may have originated; or in whose jurisdiction the disputed lands may be situated; or the parties may reside. Every process, rule, and order is to limit a certain time in which it is to be served, executed, and returned to the provincial court. If the judge of a zillah or city court to whom any process, rule, or order, may be directed, shall wilfully disobey, or neglect to perform, the commands contained in it; or shall make a false return; the provincial courts are enjoined to make an immediate report of such disobedience, neglect, or false return to the sudder dewanny adawlut; which court is authorized to suspend the judge, so offending, from his office; and is required to notify the suspension, with all relative proceedings, and papers, within ten days, for the determination of the Governor General in Council *.

“ If

ties and witnesses, and all judicial orders of provincial courts, in what language to be written, or printed.

And in what manner to be issued, served, and executed.

Report to be made to, and power of suspension vested in, court of sudder dewanny adawlut, in cases of disobedience, neglect, or false return, by any zillah or city court.

* A question having arisen as to the language, in which precepts should be issued by the courts of appeal to the judges of the zillah and city courts, it has been explained and directed by a circular order from the sudder dewanny adawlut, under date the 12th October 1803, that all process to parties and witnesses, as well as all decrees and orders of court, respecting causes or other judicial matters, which, according to the regulations, must be written in the native languages, are to be enclosed in an English precept from the provincial court; and that the zillah and city judges, when they have any information to certify to the provincial courts, or to the sudder dewanny adawlut, or any return to make to them, relative to causes, or any matter of judicial cognizance, are to transmit an English certificate, or return, with a copy of their Persian proceedings, containing the information to be certified, or the particulars of what may have been done in execution of orders. This rule of practice had before been adopted by the sudder dewanny adawlut in its communications to the provincial courts; and was directed, on the 20th April 1801, to be observed by the latter in any certificates or returns they might have occasion to transmit to that court. The provincial, zillah, and city courts were further instructed, on the 12th October 1803, to observe the same mode of communication in any applications they may have to make to each other, or to the collectors, or other European officers of government, for papers, information, or any other purpose; in which cases copies of,

R. V, 1793, § X.
R. IV, 1803, § X.
Charges of corruption, preferred to a provincial court, against the judge of a zillah or city court, how to be proceeded upon.

Provincial courts how to proceed in other cases, when the zillah and city judges may appear guilty of negligence or misconduct.

“ If any person shall charge the judge of a zillah or city
“ court, before the provincial court of the division, with
“ having been guilty of corruption in opposition to his oath;
“ the provincial court is to receive the charge, and forward
“ it to the sudder dewanny adawut, provided the com-
“ plainant shall previously make oath to the truth of the
“ charge; (or subscribe the required declaration, if he be
“ of the description of persons whom the court is empowered
“ to exempt from taking an oath;) and give security, in what-
“ ever sum the court may judge proper, to appear, and pro-
“ secute the charge, when required.” In all other cases, not
expressly provided for, when it may appear to the provin-
cial courts, that the judges of the zillah or city courts have
been guilty of negligence or misconduct in the discharge of
their duty, they are to report the circumstances to the sudder
dewanny adawlut, which court is directed to proceed there-
upon, or upon charges of corruption against a zillah or city
judge, in the manner hereafter stated. The object of these
provisions, whereby the provincial courts are restricted from
the exercise of any personal authority over the judges of the
zillah and city courts, is to maintain the high respect due,
in every station, to the judicial office and character; whilst,
at the same time, a strict observance of the regulations is pro-
vided for by the power vested in the courts of appeal; and
the subordination, indispensibly requisite in every department
of the public service, is preserved for the courts of justice
in general by the authority delegated to the sudder dewanny

of, or extracts from, their Persian proceedings, containing the substance of the application, are to be enclosed in a short English address, requesting compliance with the contents; or if it be a case in which the court is directed, or empowered, to issue an order and precept to any European officer of government, the Persian copy of such order, or an extract from the proceedings containing it, is to be enclosed in an English precept, under the seal of the court, and signature of the judge or register, requiring performance of the order so transmitted within a limited time; or that sufficient cause be assigned within such period why the order is not put in execution. The object of these instructions is not only to maintain the respect due to the European officers of government; which it is difficult to preserve in a Persian order, or application, directly addressed to them; but also to complete the record of every civil cause in the prescribed language, by having all orders, applications and returns, recorded at length in the original proceedings, and documents of the cause.

adawlut;

adawlut; and the superintending control of His Excellency the Governor General in Council.

THE provincial courts are further empowered “ to try and
 “ determine in the first instance, any suit or complaint, or
 “ any matter whatever of a civil nature, which may be trans-
 “ mitted to them for that purpose by the Governor General
 “ in Council, or by the fudder dewanny adawlut;” also “ to
 “ receive any original suit or complaint, which may be cog-
 “ nizable in any zillah or city court within their respective
 “ jurisdictions; and to command the judge of such court
 “ to receive the suit, or complaint, and proceed to hear and de-
 “ termine it; provided proof shall be previously made to their
 “ satisfaction, that the judge refused or omitted to receive or
 “ proceed in it;” and lastly, “ to receive any petitions ref-
 “ lecting suits or matters that may be depending or have
 “ been decided in any zillah or city court, within their res-
 “ pective jurisdictions; and provided it shall be proved to
 “ their satisfaction that the petition was presented, or that
 “ due means were used to effect its being presented, to the
 “ judge, and that he refused or omitted to receive it, and
 “ proceed on it; or in the last mentioned case that undue
 “ means were used by any of the officers of the court to
 “ prevent the petition being presented; the provincial court
 “ are empowered to issue a precept, under the seal of the
 “ court and attested by the register, commanding the judge
 “ to receive the petition, and to proceed respecting it ac-
 “ cording to the regulations.”

R. V, 1793, §
 VI, and VII.
 R. II, 1798, §
 V, and VI.
 R. IV, 1803, §
 VI, VII, and
 VIII.

Further power
 of the provin-
 cial courts to
 try suits refer-
 red to them by
 government or
 the fudder de-
 wanny adawlut.
 To receive and
 order the trial
 of suits cogni-
 zable in the zil-
 lah and city
 courts, in cer-
 tain cases.

And to receive
 and direct the
 regular pro-
 ceeding upon
 petitions ref-
 lecting matters
 depending in
 the zillah and
 city courts, un-
 der certain pro-
 visoos.

THE public utility and importance of the provincial courts, which have been thus established, for the supervision of the courts of original jurisdiction; and to receive appeals from their decisions, in every case wherein the suit may not have been already heard in appeal by the zillah or city judge, after being originally tried by his register, or a native commissioner; as well as in all cases heard by the judge in ap-
 peal

Concluding ob-
 servation on the
 utility and im-
 portance of the
 provincial
 courts of ap-
 peal.

peal from his register's decision, if the latter be reversed or altered by the second judgment, and the amount or value, adjudged or disallowed, exceed one hundred sicca rupees; cannot require any lengthened comment, after what has been stated of the consequences arising from the want of local courts of appeal, before these were constituted. It will be sufficient to quote the words of the illustrious Personage by whom they were proposed *. " These courts will be the
 " great security to government for the due execution of the
 " regulations; and the barriers to the rights and property of
 " the people. Their decisions will command respect; and
 " at the same time that they will give security to property,
 " and afford protection to the people, their weight and influence will contribute greatly to the vigor and stability of
 " our internal government. A great part of the property of
 " the country will be held under their decrees; and their
 " decisions on cases, and the rights of individuals, will in
 " many instances, in course of time, have the force of law.

* From the public minute of Marquess CORNWALLIS, recorded on the 11th February 1793. The following extract from the same comprehensive record, (which is appealed to as forming the basis of the system established in 1793,) states precisely the degree of control intended to be exercised by the provincial courts over the judges of the zillah and city courts. " From the very respectable footing on which the judicial officers are proposed to be placed, and the care which, it is to be presumed, will always be taken to select persons who are best qualified, by abilities and integrity, to fill them, I am persuaded that instances of corruption, or other misconduct, in any of the judges, will rarely occur. It is necessary however, upon general principles, that such cases should be provided against, and the following measures appear best calculated for the purpose. The provincial courts of appeal should be empowered to receive any charges that may be preferred to them against the judges of the zillah or city courts. But to prevent the characters of these judges being wantonly aspersed, rules should be laid down to deter people from making groundless accusations. The provincial courts should not be permitted to make any inquiries, in the first instance, into the charges that may be preferred against the zillah or city judges; but should be directed to forward them to the sudder dewanny adawlut. This court should issue a special commission to the provincial courts to make such enquiries and to take such evidence respecting the charges as it may think advisable. The observance of this formality will be essential. It will not obstruct the bringing forward of well founded complaints: at the same time it will operate to deter people from preferring groundless charges. To delegate to the provincial courts of appeal a power to enquire into such charges, without a previous reference to the sudder dewanny adawlut would, in fact, be making the judges of the zillah and city courts personally subject to their authority. This would soon deprive the zillah and city judges of all weight and consequence in the eyes of the people, and lessen that respect with which, it is necessary, they should look up to their decisions. The judges of the provincial courts should possess no authority over the judges of the zillah and city courts personally. Their control over them should be only that of a superior court, empowered to revise their decrees, when regularly brought before them in appeal."

FROM

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Harington, John H.

An elementary analysis of the laws and regulations enacted by the
Gouvernor General in Council, at Fort William in Bengal for the civil
government of the british territories under that presidency
Bd.: 1. (1805). - XII, 124 S.

Calcutta 1805

2 J.rel. 16-1

urn:nbn:de:bvb:12-bsb10493918-8